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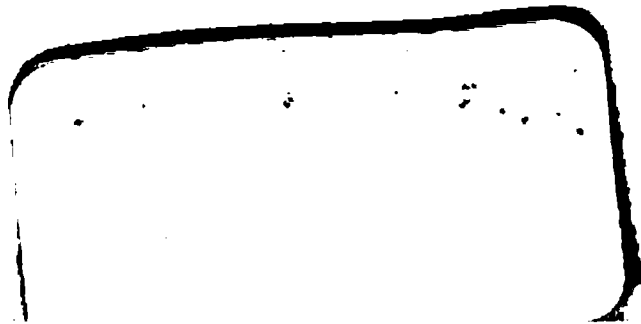
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MANDAMUS CASES

DECIDED IN THE

SUPREME COURT OF MICHIGAN.

**INCLUDING A SYNOPSIS OF ALL REPORTED MANDAMUS CASES TO
JANUARY 1, 1898, AND OF HITHERTO UNREPORTED CASES
FROM JANUARY 1, 1891, TO JULY 1, 1897.**

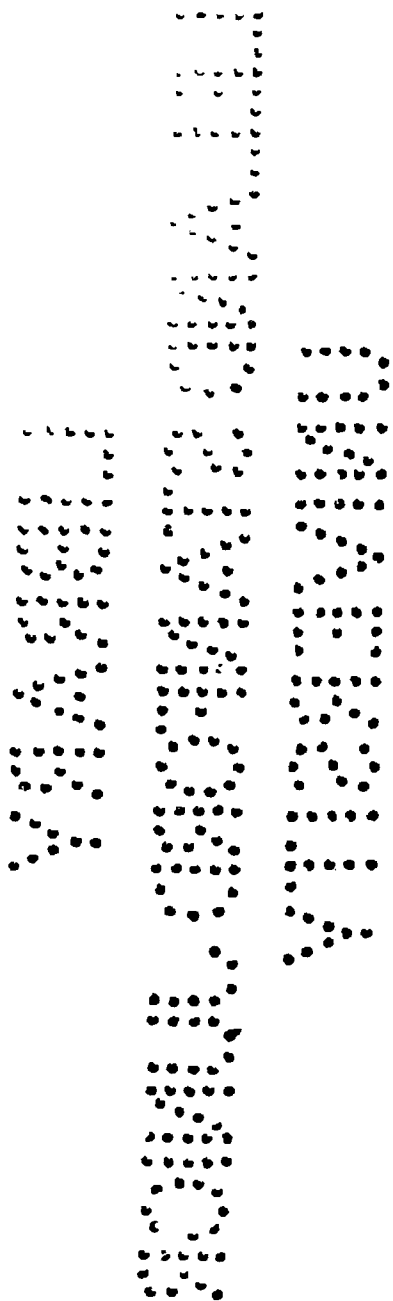
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NOTE.—Cases against *Circuit Judges, Superior Court Judges, Recorder's Court Judges, Probate Judges, Justices of the Peace, Police Justices and Circuit Court Commissioners*, are cross-indexed under those titles; those against *Circuit Judges and Probate Judges* arranged by counties, and those against *Superior and Recorder's Court Judges*, by cities.

For cases by or against other *State, County, City, School, Township, or Village Officers or Boards*, see official title, as *Governor, Board of State Auditors, Commissioner of Insurance, Sheriff, Prosecuting Attorney, Register of Deeds, City Treasurer, City Clerk, Controller, Village President, Village Clerk, Township Board, Township Treasurer, Township Clerk, School District, School District Assessor*, etc.

For cases by or against *Administrators, Banks, Insurance Companies, Mining Companies, Railroad Companies, Receivers, Street Railway Companies*, etc., see those titles.

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CASES.

1 BURLAND vs. NORTHWESTERN MUT. BEN. ASS'N, 47 M., 424.

Mandamus proceedings do not adjudicate rights, but are a mode of enforcing existing rights or compelling the performance of acknowledged duty. The award of mandamus concludes nothing and cannot be pleaded in bar, and its denial will not sustain error.

2 WEED ET AL. vs. MIRICK (Garnishee), 62 M., 414.

Defendant was garnished as mortgagee, in a suit against the mortgagor of personal property.

Held, that the validity and good faith of the mortgage had been passed upon in certain mandamus proceedings in the Supreme Court, and that such decision is res judicata.

3 SCHWAB vs. COOTS (Sheriff), 44 M., 463.

A judgment subjecting respondent in mandamus proceedings to liability to pay money or stand imprisoned for contempt in neglecting to obey the writ, is as final as any other money or final judgment and is reviewable.

4 KEPPEL ET AL. vs. MOORE (Garnishee), 66 M., 292.

Appeal from a judgment rendered upon the trial of statutory issues in a garnishee suit.

The garnishee had before the trial moved to dismiss the proceedings for want of a good statutory affidavit. The circuit judge denied the motion and a mandamus was asked to review that decision, but the court had refused to exercise its discretion in granting the writ.

Held, that the decision on a motion for a mandamus based upon conflicting affidavits was not such a determination of the facts as would preclude a trial on the testimony.

5 FLETCHER vs. CIRCUIT JUDGE (Kalamazoo), 39 M., 301.

Held, that a fine under the Statute, Comp. L., 7110, for not observing a writ of mandamus only applies where the writ has actually issued and been disobeyed, and that a failure to make return to an order to show cause does not come within the Statute.

6 HEWETT vs. PROBATE JUDGE' (Oakland), 67 M., 1.

In applications for mandamus all record evidence relied upon should be brought before the court as exhibits, in the shape of certified copies or authenticated in some way, rather than by bare recital of its existence in the petition.

Kronin vs. Board of Supervisors, 58 M., 448.

7 PLUGGER ET AL. vs. TOWNSHIP BOARD (Filmore), 11 M., 196.

7½ D. & H. RAILROAD CO. vs. TOWNSHIP BOARD (Salem), 19 M., 11.

Order to show cause issued during preceding term. Return made in vacation. Cause not placed on docket.

Held, that in such case the cause must be treated as a calendar cause, regularly noticed and placed on docket, and the records and briefs printed.

8 SWEET vs. CIRCUIT JUDGE (Newaygo), No. 13392, 95 M., 449.

To compel respondent to quash a suit commenced by summons, on the ground that the summons had been delivered to the attorney, signed in blank without reference to the particular suit, and the entry fee had not been paid

Denied April 28, 1893, with costs.

9 MIDLER vs. SUPERIOR COURT JUDGE (Grand Rapids), 38 M., 310.

To require respondent to set aside the service of process as insufficient, it having been made by laying it on the body of a man too sick to understand it.

Granted January 29, 1878.

10 PEOPLES' MUTUAL BENEFIT SOCIETY OF ELKHART, INDIANA, vs. CIRCUIT JUDGE (Wayne), No. 13814, 97 M., 627.

To set aside a default judgment, where the affidavit of service of the declaration, by which the suit was commenced, failed to show how the service was made.

Granted November 15, 1893, with costs, on the ground that the Statute, Howell's, Sec. 7293, required that the return should show the time and manner of service.

11 BALDWIN vs. CIRCUIT JUDGE (St. Clair), No. 12542.

To compel respondent to quash a subpoena.

Granted February 17, 1892, with costs.

The subpoena required defendant to have his appearance entered "within twenty days after the day of November, 1891, which is the return day of the writ," and while it gave the name of the month and year in which issued, it did not give the day of the month, nor did the original give the return day of the month nor the day of the month on which the subpoena issued.

12 MICHIGAN MUTUAL FIRE INS. CO. vs. CIRCUIT JUDGE (Wayne), No. 16015, 4 D. L. N., 9; 70 N. W., 582.

To compel respondent to vacate an order overruling a motion to quash the service of a summons, in a suit commenced against relator, whose office is at Lansing, Ingham Co., Mich.

Denied April 5, 1897, with costs.

An order was made, based upon an affidavit filed in the case, directing the service to be made upon George E. Moody, and that a copy be mailed at Detroit, Mich., to relator at Lansing, Mich. Relator moved to quash because the service was not properly made; that it was not made upon the defendant, nor upon an officer or agent of the company.

Held, that as a general rule the writ will not lie where the law has provided another remedy; that to this rule an exception is made if the slowness of the ordinary legal forms is likely to produce such immediate injury or mischief as ought to be prevented; that the writ will be entertained when the court has refused to retain jurisdiction, supposing it had no jurisdiction when it had in fact, but if the court claims jurisdiction where it is not entitled to exercise it, such action can be reviewed by appeal or writ of error and mandamus will not lie.

13 MITCHELL vs. CIRCUIT JUDGE (Huron), 53 M., 541.

To set aside the service of a summons made upon one who at the time was outside of the jurisdiction in which he lived, and was there for the sole purpose of attending as a necessary witness in another case.

Granted April 30, 1884.

Costs are not allowed on issuing the writ, if no intentional wrong on respondent's part is charged or appears.

14 JACOBSON vs. CIRCUIT JUDGE (Wayne), 76 M., 234.

To set aside service of summons for breach of privilege.

Granted July 12, 1889.

Relator, a resident of Greenville, in Montcalm County, while at Vassar on business, was sued civilly and arrested criminally January 24, 1889. Being let to bail in the latter part of the day he came the next morning to Detroit to consult his attorneys, and while there was served with the process issued from the Wayne Circuit Court for same tort.

15 HOFFMAN vs. CIRCUIT JUDGE (Bay), No. 16283, 4 D. L. N., 165; 71 N. W., 480.

To compel respondent to dismiss proceedings commenced in Bay County against relator, an attorney at law, while on his return to his home in St. Ignace, from attendance at the Supreme Court in the argument of a case.

Granted May 25, 1897, with costs against plaintiff.

Held, that Sec. 7253 of How. Stat. exempts from service of process an attorney at law while attending upon the court, and while going to and returning from the court to the county of his residence.

16 TORRENT ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 12300.

To compel respondent to grant a motion to quash service.

Denied October 29, 1891, with costs.

Trover was commenced against relators and one Hancock. Hancock was sheriff and Collins was a deputy sheriff under him. Before service plaintiff discontinued as to Hancock, and one Nelson, a deputy under Hancock, served process upon relators. Relators contended that the discontinuance followed the service upon them; that the sheriff was at that time a party to the suit, and that Act No. 30, Laws of 1887, does not apply, where the sheriff is a party to the suit.

17 WATSON vs. CIRCUIT JUDGE (Wayne), 24 M., 38.

To vacate an order setting aside as irregular and unauthorized the service of a summons in favor of the relator against a foreign corporation, the return showing service as having been made on the secretary.

Denied November 1, 1871.

Held, that the Statute (Comp. Laws, Sec. 4835) providing for service on various named corporation officers only applies to our own corporations and was not designed to reach foreign corporations.

18 DETROIT FIRE & MARINE INS. CO. vs. CIRCUIT JUDGE (Saginaw), 23 M., 491.

To compel the vacation of an order directing service of process against the relator to be made upon one Edward P. Allen, the agent of the company in that county, issued upon an affidavit of the attorney for plaintiff, setting forth that the relator had no presiding officer, cashier, secretary or treasurer within the limits of that county.

Granted October 17, 1871, with costs against the plaintiff.

Held, that substituted service, under Comp. Laws, Sec. 4835, on a domestic corporation located in this state, can be made only in the county where such corporation has its principal office.

19 LANGE ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 12297.

To compel respondent to set aside service of narr.

Denied October 29, 1891, with costs.

Cause commenced August 6, 1891. Sheriff returned that he made service July 29, 1891. Defendants appeared specially and moved to quash. Sheriff then filed affidavit alleging the mistake and made a return showing service August 6, 1891.

20 CITY OF MENOMINEE vs. CIRCUIT JUDGE (Menominee), 81 M., 577.

To set aside the service of a declaration and notice of rule to plead, for the reason that the Statute does not authorize the commencement of suits by declaration against municipal corporations.

Denied July 2, 1890.

21 BROWN vs. CIRCUIT JUDGE (Wayne), No. 15690½.

To compel respondent to dismiss a cause commenced by declaration, because no rule to plead had been entered, although a notice of the entry of such rule was endorsed upon the copy of the declaration served.

Order to show cause denied July 1, 1896.

22 BLANCK vs. CIRCUIT JUDGE (Ingham), 44 M., 98.

To compel respondent to strike a declaration from the files, in a case where service thereof was made at 2 o'clock p. m. and no declaration was filed or rule to plead entered in the office of the clerk of the Circuit Court until 9 o'clock p. m. of the same day.

Denied June 17, 1880, on the ground that Courts will not inquire into fractions of a day where the defendant has not been misled.

23 GRAND TRUNK RY. CO. vs. CIRCUIT JUDGE (Wayne), No. 14876, 106 M., 248.

To compel respondent to quash the service of a declaration in a suit against relator, a foreign corporation, where the cause of action arose in Canada.

Granted July 9, 1895, with costs.

23½ RYERSON vs. CIRCUIT JUDGE (Wayne), No. 16374, 4 D. L. N., 559.

To compel respondent to set aside an order dismissing proceedings against a foreign corporation where service was made upon the traveling agent of such corporation.

Granted September 14, 1897, holding that such service was authorized by Act No. 61, P. A. 1895.

24 MAXWELL vs. CIRCUIT JUDGE (Wayne), 60 M., 36.

To vacate an order quashing the service of a declaration upon a foreign corporation, and dismissing the suit commenced thereby, where service was quashed upon motion, because the cause of action arose outside of this State.

Granted February 10, 1896, on the ground that such a defense should be presented by plea and not by a motion to quash.

25 LUNGERHAUSEN vs. CIRCUIT JUDGE (Macomb), No. 16030.

To compel respondent to vacate an order setting aside service, made in Wayne County in a suit commenced in Macomb, of a declaration, in an action of assumpsit for services performed by relator as an attorney at law.

Denied, with costs, June 7, 1897.

The circuit judge held that the service rendered is not such labor and service as is contemplated by How. Ann. Stat., Sec. 7317.

26 ALLISON vs. CIRCUIT JUDGE (Washtenaw), No. 14628, 104 M., 141.

To compel respondent to quash the service upon relator of a declaration served upon him in Wayne County, as joint maker of a note, in a suit commenced in Washtenaw, before proof of service upon the joint defendant in the latter county was filed.

Granted February 12, 1895, with costs.

27 HOSIE vs. CIRCUIT JUDGE (Wayne), 22 M., 492.

To vacate an order setting aside service upon the maker of a note residing in Alpena County, in a suit commenced in Wayne County, after service upon the indorsers in Wayne.

Granted April 18, 1871.

Held, that all persons authorized by law to be joined as defendants are joint defendants within Act No. 51, Laws of 1869.

28 WEIDENFIELD vs. CIRCUIT JUDGE (Wayne), No. 15478½.

To compel respondent to vacate an order for substituted service, where relator, a non-resident, was made a party to a foreclosure proceeding as the maker of the mortgage and bond, and a decree against him for any deficiency that might arise was prayed for.

Order to show cause denied March 11, 1896, on the ground that relator's remedy is by appeal.

29 NEESLEY vs. CIRCUIT JUDGE (Jackson), No. 13752½.

To quash a writ of garnishment issued upon a judgment on a transcript filed from justice of the peace, where the amount of the judgment was less than \$100.

Order to show cause denied October 3, 1893.

30 MILWAUKEE BRIDGE & IRON WORKS vs. CIRCUIT JUDGE (Wayne), 73 M., 155.

To vacate an order denying a motion to quash garnishee proceedings against relator, and to grant the motion.

Granted January 8, 1889, on the ground that prior to the enactment of Act No. 266, Laws of 1889, there was no statute in this State providing for the service of a writ of garnishment upon a foreign corporation.

31 SHAFER IRON CO. vs. CIRCUIT JUDGE (Iron), No. 12323, 88 M., 464.

To compel respondent to set aside the service of a writ of garnishment and to vacate an order requiring the production, for examination, of the officers and agents of a foreign corporation residing in another state, upon the ground that the service of the writ was not made upon any proper officer or agent; that the statute authorizing service upon foreign corporations is unconstitutional, and that the circuit judge has no power to compel officers of a corporation residing out of the state to appear before him for examination.

Granted in part November 20, 1891.

Held (1) that service under How. Stat. Sec. 8086 as amended by Act No. 266, Laws of 1889, was not confined to a general agent of the corporation; (2) That How. Stat. Sec. 8061, does not apply to a foreign corporation when summoned as garnishee, and hence that the circuit judge had no power to order the officers to appear and bring before him the books and papers of the corporation.

32 THOMPSON & CHUTE SOAP CO. vs. CIRCUIT JUDGE (Muskegon), No. 14126½.

To quash garnishment, on the ground that the principal action is in fact an action for a breach of contract.

Order to show cause denied April 17, 1894.

32½ HUDSON (Receiver) vs. CIRCUIT JUDGE (Saginaw), No. 16031, 4 D. L. N., 523.

To set aside an order dismissing garnishment proceedings commenced against executors.

Denied September 14, 1897, on the ground that garnishment will not lie against executors or administrators.

33 INNIS vs. CIRCUIT JUDGE (Wayne), No. 15127.

To dismiss garnishment proceedings because, in the principal suit commenced by declaration, no rule to plead was entered until the next day after the suit was commenced and after service upon both the principal defendant and the garnishee defendant.

Denied October 23, 1895, with costs.

34 GERMAN AMERICAN INS. CO. vs. CIRCUIT JUDGE (Chippewa), No. 14672, 105 M., 566.

To quash a writ of garnishment issued at the suit of G. against H. & L., co-partners, as principal defendants, and relator, a foreign corporation, garnishee defendant, for the reason (1) that service was not made upon any officer or agent of the corporation, hence not upon anyone authorized to disclose, but upon the Commissioner of Insurance, and (2), that the affidavit alleges that the garnishee defendant is indebted to H. and does not allege that H. is individually indebted to plaintiff, but sets forth that H. and L. are so indebted.

Denied June 4, 1895, with costs.

35 FARWELL vs. CIRCUIT JUDGE (Wayne), 62 M., 316.

To vacate an order quashing a writ of garnishment, where in a suit against two defendants, the affidavit averred an indebtedness due to one of them and where the principal defendants and the garnishee defendant were general partners, and the plaintiff was a special partner in said firm, and, in order to ascertain the relative rights of the partners, an accounting must be had.

Denied July 1, 1886.

Held, that under How. Stat. Sec 8056, prior to its amendment by Act No. 128, Laws of 1885, the first reason was a sufficient ground for quashing the writ, citing *Ford vs. Dry Dock Co.*,

50 M., 358, and if the amendment changed the rule, the second reason was sufficient, for a claim to be subject to garnishment, must be one for which the principal defendant can maintain an action at law.

36 UNION NATIONAL BANK vs. CIRCUIT JUDGE (Wayne), No. 15642½.

To vacate an order dismissing garnishment proceedings for want of prosecution, it appearing that three garnishee defendants were individually proceeded against and separately answered, and in the title of the motion to dismiss the three were joined as garnishee defendants, and the motion to vacate was based upon such joinder.

Order to show cause denied June 2, 1896. See St. Sav. Bk. vs. Ct. Judge, 95 M., 100, No. 39.

37 BETHEL vs. SUPERIOR COURT JUDGE (Detroit), 57 M., 379.

To vacate an order dismissing garnishee proceedings.
Granted June 17, 1885.

Assumpsit was brought against two parties as partners and a writ of garnishment issued. In the principal suit the jury found a verdict in favor of plaintiffs against one of the defendants and in favor of the other by reason of his infancy. They also found specially that defendants were co-partners.

The trial court dismissed the proceedings in garnishment because of the failure to recover against both of the defendants.

38 THIRD NATIONAL BANK (Detroit) vs. CIRCUIT JUDGE (Wayne), No. 12011½.

To quash writs of garnishment, for the reason that the garnishee defendant is a corporation and neither in the affidavit nor

in the writ is it described as such, nor is it described as a partnership, hence no garnishee defendant is named.

Order to show cause denied May 19, 1891.

**39 STATE SAVINGS BANK vs. CIRCUIT JUDGE (Wayne), No. 13294,
95 M., 100.**

To quash a writ of garnishment on the ground of insufficiency and imperfections in the affidavit, in that it contained (1) no averment that the principal suit was then pending; (2) no averment that the debt sued upon was due when action was begun; (3) no averment that the garnishee defendants are jointly indebted, and (4) the return day stated in the writ is given as Tuesday, December 16, 1892, whereas Tuesday was not the sixteenth.

Denied March 10, 1893, with costs.

40 SELIGMAN vs. CIRCUIT JUDGE (Saginaw), No. 14975½.

To quash a writ of garnishment for the reason that the affidavit, which was made by a person other than the plaintiff, did not state that affiant was justly apprehensive of the loss, etc., but stated that the plaintiff was apprehensive, etc.

Order to show cause denied June 25, 1895.

The circuit judge upon the hearing permitted plaintiff to file another affidavit in which the affiant set forth that he was justly apprehensive, etc.

41 BAUGH vs. CIRCUIT JUDGE (Wayne), No. 12777.

To vacate order quashing writ of garnishment.

Granted May 11, 1892, with costs.

The circuit judge quashed the writ on the ground that the affidavit for the writ did not sufficiently describe the court in which the decree on which the suit is brought was obtained. The

affidavit alleged that affiant is complainant in a case commenced, etc., and "that the same is a personal action arising upon a decree in chancery in an action for divorce, in which deponent was complainant and the said defendant was defendant, in favor of complainant."

42 MILLARD vs. CIRCUIT JUDGE (Lenawee), No. 15173; 64 N. W., 1046; 2 D. L. N., 608.

To set aside an order quashing garnishment proceedings entered because (1) the affidavit for the writ was made before the original suit was commenced, although on the same day, and (2) because the garnishee summons warned the garnishee defendant to pay no money to "Mrs. J. A. Hays" (the plaintiff).

Granted November 19, 1895, with costs.

43 PENINSULAR STOVE CO. vs. CIRCUIT JUDGE (Wayne), No. 11919, 85 M., 400.

To compel respondent to set aside an order quashing proceedings in garnishment, because the affidavit alleged both that the garnishee defendant was indebted to the principal defendant and that he had property, etc., belonging to the principal defendant "involving both trover and assumpsit in the same action."

Granted April 2, 1891, with costs.

44 PHELPS ET AL. vs. CIRCUIT JUDGE (Wayne), No. 15847.

To compel respondent to reinstate garnishment proceedings which were dismissed because four terms of court had intervened after judgment against the principal defendant, and plaintiffs had neglected to place on the docket for trial the issue which had been framed, or to have said garnishment proceedings continued from term to term.

Denied October 21, 1896, with costs.

45 BUTZEL ET AL. vs. CIRCUIT JUDGE (Lenawee), No. 15691.

To vacate an order dismissing garnishment proceedings for failure to bring the same to a speedy trial, where judgment in the principal suit was rendered July 5, 1895, the motion to dismiss was heard June 13, 1896, and in the meantime two full terms of court had been allowed to pass.

Denied October 13, 1896, with costs.

46 ESLER vs. CIRCUIT JUDGE (Kent), No. 15271; 66 N. W., 485; 2 D. L. N., 945.

To vacate an order quashing garnishment proceedings instituted by a defendant upon a judgment obtained by him against a plaintiff.

Granted March 11, 1896, with costs against the garnishee defendant.

47 NEWLAND ET AL. vs. CIRCUIT JUDGE (Wayne), No. 11739, 85 M., 151.

To compel the dismissal of a writ of garnishment, where residents of Boston, Mass., had commenced an action in the Wayne Circuit Court against residents of New York, but no service was had upon the principal defendants.

Denied April 17, 1891, with costs.

Held, that How. Stat. Sec. 8087 covers a case where plaintiff is also a non-resident and points out the mode of procedure to acquire jurisdiction over the principal defendant, in order to subject the choses in action in the hands of the third party to payment of plaintiff's demand.

48 WILSON ET AL. vs. CIRCUIT JUDGE (Wayne), 82 M., 169.

To quash certain garnishment proceedings, in a case where one of the principal defendants was a resident of the County of

Wayne, and the other two were non-residents of Michigan, and the summons was personally served on the resident defendant and was returned not served as to the other two defendants.

Granted August 1, 1890.

Held, that How. Stat. Sec. 8087, relating to the commencement of suit against a non-resident defendant, where garnishment proceedings had been instituted in aid of the principal suit, does not cover a case where there are several defendants, some of whom are residents of this State and are personally served with process within the jurisdiction of the court.

49 STERN ET AL. vs. CIRCUIT JUDGE (Wayne), No. 14835, 105 M., 685.

To compel the vacation of an order quashing garnishment proceedings against one McCartney.

Denied July 2, 1895, with costs.

Stone et al., non-residents, brought suit, by attachment, in Wayne County against Block, a non-resident, causing to be issued out of the Wayne Circuit Courts writs of attachment against one Weiner, a resident of Wayne County, and a writ of garnishment against McCartney, a resident of Ionia County. Block had no property in Wayne County and did not appear. Before the return day of any of the writs, plaintiff discontinued as to Weiner and afterwards McCartney answered admitting an indebtedness to Block, but alleging that he had been informed that the claim had been assigned by Block prior to the service of the writ of garnishment. Plaintiffs then demanded a trial of the statutory issue. McCartney afterwards moved to quash the writ.

Relators contend that the affidavit in garnishment stands as a declaration; that the disclosure has the same effect as a plea (How. Stat., Sec. 8068), or as an answer in Chancery (Allen vs. Hazen, 26 M., 141); that by the disclosure the garnishee defendant had waived the jurisdictional question and that as service had been made upon the principal defendant, as required by How. Stat., Sec. 8095, the case is ruled by Newland vs. Circuit Judge, 85 M., 151. (No. 47.)

50 HOGAN vs. CIRCUIT JUDGE (Wayne), No. 14200.

To vacate order quashing garnishment proceedings.

Denied June 21, 1894, with costs.

Relator filed a praecipe directing summons to issue in a cause entitled Walter G. Hogan vs. F. G. Smith, Sons & Co. in a plea of trespass on the case upon promises. The summons issued and served on the principal defendant, contained the name of Robert R. Howard as defendant and set forth the action to be trespass. On the same day a writ of garnishment issued to Robert R. Howard. Both affidavit and writ set forth the commencement of suit against Smith, Sons & Co. in an action of trespass on the case upon promises. The papers were served. The garnishee defendant answered denying indebtedness and a demand for his examination under the Statute was made. Afterwards Howard appeared specially and moved to quash. Plaintiff then obtained an order, ex parte, amending the summons, and a corrected summons was taken out and served upon Smith, Sons & Co. The principal defendant then appeared specially and moved to set aside the order granting leave to amend and to strike from the files the original summons, which motion was granted.

51 WESTERN KNITTING MILLS CO. vs. CIRCUIT JUDGE (Wayne), No. 11987.

To compel respondent to vacate an order quashing a writ of garnishment.

Granted May 21, 1891, with costs.

The writ issued in a suit commenced by relator against another domestic corporation as principal defendant and against one Balch as garnishee defendant, and was quashed because the corporations were not described as such in the affidavit, but were referred to by name only.

Respondent relied upon *Ettelson vs. Fireman's Ins. Co.*, 64 M., 331, where the affidavit failed to allege the corporate capacity and existence of the garnishee. Relator contended that the garnishee proceedings were ancillary and inasmuch as the declaration fully described the parties to the original suit, that was sufficient.

52 CONWAY vs. CIRCUIT JUDGE (Ionia), 46 M., 28.

To vacate an order dismissing garnishee proceedings, founded on an affidavit which fails to show the nature of the contract of the principal defendants or to identify it with the cause of action in suit.

Denied, with costs, April 13, 1881.

53 WHITNEY vs. CIRCUIT JUDGE (Kent), 38 M., 308.

To compel respondent to set aside proceedings under a *capias*, because not made returnable on the first day of term.

Granted January 29, 1878.

54 NICHOLS vs. CIRCUIT JUDGE (Ingham), No. 16201½.

To require respondent to vacate an order dismissing a *capias ad respondendum* and discharging the appearance bail.

Order to show cause denied April 14, 1897.

The action was for breach of promise of marriage.

55 DOUGLASS ET AL. vs. CIRCUIT JUDGE (Manistee), 42 M., 495.

To compel respondent to vacate an order discharging from custody a defendant taken upon a *capias ad satisfaciendum*.

Denied January 20, 1880.

The execution issued May 13, 1878, but was not returned until July 9, 1879. Held, that the defendants could not be taken on a *capias* issued over three months after the return day of the execution. Held, further, that an answer would be disregarded if only drafted by the attorneys in the case without being submitted to the respondent and approved by him.

The case was however treated as on demurrer to the relator's showing.

56 MILLS vs. RECORDERS' COURT JUDGE (Detroit), No. 12751, 91 M., 521.

To compel respondent to quash a capias for the re-arrest of relator and to allow the approval of a bail bond by a Police Justice.

Denied May 4, 1892.

Relator had been bound over by the Police Court. Afterwards the police justice admitted him to bail. Held, that the Police Court had lost jurisdiction for any purpose.

57 WONDERLY vs. CIRCUIT JUDGE (Kent), 41 M., 722.

To set aside a capias, on the ground that it was not made returnable on the first day of the term, which was October 6, 1879, where the writ was returnable "on the seventh day of October, 1879, that being the first day of the next succeeding term."

Denied October 21, 1879, on the ground that the writ furnished the means of its own correction and the erroneous mention of a wrong day of the month did not vitiate it. See No. 58.

58 EPSTEIN vs. CIRCUIT JUDGE (Wayne), No. 15587.

To quash a capias because made returnable more than three months after the date of its issue, it having been issued March 19, 1896, and made returnable "on the seventh day of July, A. D. 1896, that being the first day of the next succeeding term of our Circuit Court."

Denied June 4, 1896, with costs, on the ground that the writ furnished the means of its own correction. See No. 57.

59 BALDWIN vs. CIRCUIT JUDGE (Branch), 48 M., 525.

To vacate the service of a capias.

Granted June 14, 1882.

Held, that where appearance bail has been accepted from a

person arrested upon a criminal warrant, issued by a justice, he cannot, pending his release on bail, be arrested on a civil capias for the same matter at the suit of the same complainant. Also, that costs on mandamus to vacate legal process may be allowed against the person at whose instance it was put in motion.

60 HOLT ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 11916½.

To vacate an order quashing a writ of capias.

Order to show cause denied April 8, 1891.

The writ was from the Muskegon Circuit Court, and defendant, who was a resident of Kent County, was arrested while at Muskegon as a witness in the cause there pending between same parties.

Mitchell vs. Circuit Judge, 53 M., 541. (No. 13.)

61 BRECKON vs. CIRCUIT JUDGE (Ottawa), No. 15550; 3 D. L. N., 243; 67 N. W., 906.

To quash a capias issued in an action for libel, on the ground that it is the second issued for the same cause of action, relator having been arrested upon the first.

Denied June 30, 1896, with costs.

The first writ was issued February 21, 1896, upon an affidavit sworn to February 20. Relator was arrested on the morning of February 21, but at one o'clock he was released by order of plaintiff who had discovered an error in the return day of the writ. On February 24, a new affidavit was filed setting up additional publications, and another writ was issued.

Relator contended that where a party has been once arrested and held to bail he cannot be again arrested for the same cause of action. 1 Green's Pr. 112-3 Enc. Pl. Pr. 161; Belifante vs. Levy, 2 Stra. 1209; Imlay vs. Ellefsen, 3 East., 309; Daniel vs. Dodd, 8 East., 334; Green vs. Young, 21 N. Y. S., 255; Kellogg vs. Underwood, 40 N. E. (Mass.), 104; McGilvey vs. Morehead, 2 Cal., 607; U. S. vs. Watkins, 4 Cranch Ct. Ct., 271; Sherburn vs. Beattie, 16 N. H., 437; that if the release had

not been voluntary, the proper practice would have been to ask the Court for a new writ and upon such application the burden would be upon the plaintiff to show that the second arrest was not vexatious—*Richards vs. Stewart*, 25 Eng. C. L., 150; *Wells vs. Gurney*, 15 Eng. C. L., 336; that the second arrest is presumed to be vexatious, 1 *Green's Pr.*, 113; that in no case can a second writ issue until the first suit is discontinued. *Carter vs. Hart*, 18 Eng. C. L., 79; *Hamilton vs. Pitt*, 20 Eng. C. L., 113; *Wells vs. Gurney*, 15 Eng. C. L., 336; *Peck vs. Hozier*, 14 *John's*, 345.

Respondent contended that the fact of a former suit pending can only be determined on a plea in abatement and not upon affidavits and motion; *Sullings vs. Goodyear*, 36 M., 313; *Near vs. Mitchell*, 23 M., 381; *Wheeler vs. Hathway*, 58 M., 77; *Fenton vs. Miller*, 94 M., 204; *Gruler vs. McRoberts*, 48 M., 317; and that a plea to be good must aver that the suit is still pending (which was not the fact here at the time that the motion was made); *Wales vs. Jones*, 1 M., 254; *Pew vs. Yoare*, 12 M., 16; that the first writ was bad under *Whitney vs. Circuit Judge*, 38 M., 308; (53) *Miller vs. Gregory*, 4 Cow., 504; that the second writ in such case was not bad unless the first arrest was vexatious; *Jewett vs. Lock*, 6 Gray (Mass.), 233; and that the question of bona fides was before the Circuit Judge upon the motion to quash.

62 GRAHAM vs. CIRCUIT JUDGE (Cass), No. 15332.

To quash a *capias*, in an action for libel, after special bail had been given and a general appearance entered, on the ground that the article published was privileged.

Denied February 26, 1896, with costs.

Plaintiff in the suit contended that the affidavit alleged that the charges published were false and that the publication was malicious —(*Foster vs. Scripps*, 39 M., 376)—and that the general appearance operated as a waiver (*Stewart vs. Hill*, 1 M., 265; *Stone vs. Welling*, 14 M., 514).

Relator insisted that the article was privileged and hence not libelous (*Wachsmuth vs. Bank*, 96 M., 426; *Johnson vs. Morton*, 94 M., 1) and that a general appearance waives irregularities but not jurisdictional defects (*Watkins vs. Plummer*, 93 M., 215; *Stevenson's case*, 32 M., 60).

63 THOMSON vs. CIRCUIT JUDGE (Bay), No. 13503½.

To quash a capias and to discharge relator.

Order to show cause denied June 13, 1893.

Relator was taken on a capias, and gave a bond to the sheriff. Relator afterwards moved to quash the writ, on the ground that no indorsement of bail was made upon said writ, either before petitioner was arrested or afterwards, and further that the relations between relator and plaintiff were not of attorney and client, but that relator collected the moneys under a contract between himself and the collection agency, and that Sec. 7302 of How. Stat. had no application to such a case.

64 EDSON ET AL. vs. CIRCUIT JUDGE (Antrim), No. 11916.

To compel the vacation of an order quashing a capias.

Granted May 6, 1891.

The sole question was as to the sufficiency of the affidavit. It was made by the agent, an attorney in fact of plaintiffs, and stated that he had knowledge of the facts; made the affidavit in behalf of plaintiffs; that defendant with intention to cheat and defraud plaintiffs and fraudulently obtain goods from them, did fraudulently represent and pretend to said plaintiffs, and did state to said plaintiffs, in writing, that he did not owe to exceed \$2,500; that believing, etc., plaintiffs were deceived and were induced by means, etc., to deliver goods amounting in value to the sum of \$1,353; that defendant obtained said goods of the value, etc., with intention to cheat and defraud said plaintiffs; that in truth and fact, said defendant did owe to exceed \$2,500, and did owe upwards of \$5,500.

65 BUTZEL ET AL. vs. CIRCUIT JUDGE (Antrim), No. 11915.

To compel the vacation of an order quashing a capias.

Granted May 6, 1891, with costs.

The affidavit sets forth among other things, that during the

months of April, September and October, 1890, defendant purchased from relators clothing of the value of \$1,850; that defendant from the first day of April, 1890, to November 1st, 1890, obtained and received goods at his store of the value of \$15,000, and had not paid out during said period to exceed \$1,500, although during the same period he had disposed of goods of the value of upwards of \$12,000; that said defendant informed affiant that he had sold said goods for cash and that he had not sold any goods except for cash and had never shipped any goods by railroad or otherwise except to return some few goods to wholesale merchants from whom he had purchased the same.

Affiant further sets forth in detail that defendant had shipped to various persons, naming them, who were not wholesale dealers, large quantities of dry goods, boots and shoes and clothing, giving in each case the date of shipment, and that such shipments were made fraudulently and with intent then and there to prevent the creditors of said defendant from reaching said goods.

66 WOONSOCKET RUBBER CO. vs. CIRCUIT JUDGE (Wayne), No. 13604.

To vacate order quashing capias.

Granted October 11, 1893, with costs.

The circuit judge quashed the capias on the ground that the allegations contained in the affidavits could not have been within the knowledge of the affiants, but were evidently upon information and belief, although not so stated.

67 KEKSI vs. CIRCUIT JUDGE (Houghton), No. 13754½.

To quash a capias ad respondendum and an order to hold to bail, in an action for libel, on the ground that the publication is not libelous.

Order to show cause denied October 3, 1893.

The publication was in the Finnish language, of which the following is a correct translation:

"From the hights of Sirkkapora.

(Meaning thereby the hill or elevated lands of the Tamarack Mining Location.)

"Often we are complaining of miserable times, we are worrying over our contemptible customs, fearing that the end of this life is approaching. But the inhabitants of 'Sirkkapora' (Meaning the hill or elevated lands of the Tamarack Mining Location where this deponent resides) have at last, during the last week, been freed from such fear by the curious female individual (this deponent meaning), who has drawn everybody's attention. This curiosity (this deponent meaning), hails from the poor shores of northern Norway, and is known as the very traitor among her own neighbors. (Thereby meaning that this deponent is the most false and treacherous person in said neighborhood.) Last week again she (this deponent meaning) got up her temper in such a shape for reasons unknown, that no one could pass her without being abused. The curiosity (this deponent meaning) was hollering and screaming like a wild beast, and the worst of it is, that she (this deponent meaning) threatens other's children.

"It is assumed that she has too much of whiskey, or the change of weather has affected her brain (meaning thereby that this deponent had been intoxicated by drinking whiskey, or has become insane).

"Ordinarily she (this deponent meaning) is one of the most famous slanderers of the world. She (this deponent meaning) is commonly known by the name of 'Punalnepuro' (the red much) (meaning thereby deponent is a contemptible person).

"How she (this deponent meaning) ever got the name, we do not know. Otherwise she (this deponent meaning) is middling high, skinny as a skeleton; her eyes are lustrous as a man-eater's, and full of fire, the nose (meaning the nose of this deponent) is big as an axe; the mouth (meaning the mouth of this deponent) is broad and wide, and foaming when she (this deponent meaning) is mad, and her chin bones (meaning the chin bones of this deponent) are crooked, and to our horror, she has her abode in the center of our village of Sirkkapora, (meaning the hill or elevated lands of the Tamarack Mining Location).

"The inhabitants of the village of Remla should take her away from us, they already have other similar daughters of Eve.

"The desire that this be published in the Laulelia is unanimous.

"THE INHABITANTS OF SIRKKAPORA.

"(Meaning the inhabitants of the hill or elevated lands of the Tamarack Mining Location.)"

68 MOYLE vs. CIRCUIT JUDGE (Houghton), No. 13844, 97 M., 636.

To vacate an order quashing a writ of capias, in a case where the allegations of fraud in the affidavit for the writ are based upon hearsay.

Denied December 13, 1893, with costs.

69 SIGEL vs. CIRCUIT JUDGE (Wayne), No. 15846½.

To vacate an order holding to bail on a writ of capias in an action in tort against relator, a physician, who is charged with so recklessly, negligently and unnecessarily performing an operation as to cause the premature delivery of a child.

Granted October 21, 1896, with costs.

Relator contended that the affidavit failed to show that the treatment given constituted malpractice; that the only evidence admissible to prove malpractice is the testimony of physicians, citing Sheridan vs. Briggs, 53 M., 569; Wood vs. Baker, 49 M., 295; Spaulding vs. Bliss, 83 M., 311; Moyle vs. Circuit Judge, 97 M., 136 (No. 68); Howell vs. Circuit Judge, 88 M., 366 (112); Stensrud vs. Delamater, 56 M., 145; McCrea vs. Circuit Judge, 100 M., 355 (114).

70 COHN vs. SUPERIOR COURT JUDGE (Detroit), 40 M., 169.

To set aside an order to hold bail, after special bail had been perfected, in an action on the case for fraud.

Denied January 14, 1879.

Held, that the matter was within the discretion of the Court.

72 KUIPER vs. CIRCUIT JUDGE (Kent), No. 15550½.

To vacate an order to hold to bail and quash a capias.

Order to show cause denied April 21, 1896.

73 STRICKLAND vs. BARTOW (Circuit Court Commissioner, Clinton), 27 M., 67.

To compel respondent to make an order to hold Ann E. Shireling to bail, upon a capias issued against her from the Circuit Court of that county, at the suit of the People in an action of debt, to recover a penalty for selling intoxicating liquors in violation of Sec. 2138, Comp. Laws 1871.

Denied April 15, 1873.

Held, that Sec. 45 of Chap. 192, Comp. Laws 1871, exempted said Ann E. Shireling from imprisonment.

74 BARTON vs. CIRCUIT JUDGE (Kalamazoo), No. 11950.

To compel respondent to quash a writ of capias.

Granted May 5, 1891, with costs.

The action was case for breach of promise of marriage. The affidavit did not set up either fraud or seduction, but simply the contract and its breach.

75 HACKETT vs. CIRCUIT JUDGE (Wayne), 36 M., 333.

To compel respondent to vacate an order granted by him setting aside an order of the circuit court commissioner, holding to bail upon a capias ad respondendum.

Denied, with costs, April 18, 1877.

The question raised related to the sufficiency of the affidavit.

76 GRIFFIN vs. CIRCUIT JUDGE (Kent), No. 15586.

To quash a capias because of alleged insufficiency of the affidavit.

Denied June 4, 1896, with costs.

77 HANEY ET AL. vs. CIRCUIT JUDGE (Kent), No. 12476½.

To quash capias on the ground of alleged insufficiency of affidavit.

Order to show cause denied January 5, 1892.

78 LEWINSTEIN vs. CIRCUIT JUDGE (Wayne), No. 13885½.

To set aside an order to hold to bail and quash a capias on the ground of the insufficiency of the affidavit.

Order to show cause denied December 12, 1893.

Rehearing denied January 26, 1894.

79 FULLER ET AL. vs. CIRCUIT JUDGE (St. Clair), No. 12333½.

To quash a capias, because of insufficient affidavit.

Order to show cause denied November 5, 1891.

The court below filed, and the same appears with the petition, a memoranda, showing a careful consideration of each allegation in the affidavit, and while the court found that certain of the statements were not sufficiently specific and others mere conclusions, he finds that the allegations, that relator's horse was seized by the township treasurer for unpaid taxes; that said township treasurer conspired with one Frantz for the purpose of an unfair sale; that Frantz brought the horse to the place of sale; that the horse was struck off to the first bidder without waiting for others, who were present with a view of bidding, to bid, or giving them an opportunity to bid, and that Frantz immediately drove the horse away beyond reach or knowledge, were positive statements of a positive wrong, and that relator was thus deprived of his property unfairly and illegally.

80 CURRO vs. CIRCUIT JUDGE (Wayne), No. 15154½, 15155½ and 15156½ (3 cases).

To vacate orders holding to bail because of the alleged insufficiency of the affidavits upon which the orders were based.

Orders to show cause denied November 5, 1895.

In each case there is an affidavit made by a party who deposes that he is the general agent of the plaintiff; a second affidavit made by relator's shipping clerk; a third affidavit made by the attorney to whom the collection was sent, who sets forth conversations with the debtor. The charges are (1) that relator, at the time of the purchase of the goods sued for, misrepresented to plaintiff personally his capital, the stock of goods on hand and his indebtedness: setting forth the representations made in detail and their falsity, but the affidavit does not allege that the agent was present when the representations were made, nor that the allegations respecting such representations are upon affiant's information and belief; (2) that immediately prior to his failure, relator purchased large quantities of merchandise, in excess of the ordinary demands of trade, and immediately disposed of the same at prices much below the market and below cost; that in some instances the goods were never delivered at relator's place of business, but were sold on board car, and that these goods were not on relator's books. In respect to the second charge, the agent is in each case supported by the shipping clerk and by the affidavit of the attorney.

81 WILSON vs. CIRCUIT JUDGE (Wayne), No. 15154.

82 CUNEO vs. CIRCUIT JUDGE (Wayne), No. 15155.

83 OTERI vs. CIRCUIT JUDGE (Wayne), No. 15156.

84 ORR & LAMBENHEIMER CO. vs. CIRCUIT JUDGE (Wayne),
No. 15157.

85 MOBILE FRUIT & TRADING Co. vs. CIRCUIT JUDGE (Wayne),
No. 15158.

To vacate orders quashing writs of *capias ad respondendum*, because of the alleged insufficiency of the affidavits upon which the orders to hold to bail were based.

Granted November 5, 1895, with costs in each case.

These orders were entered in cases commenced against Phillip Curro, (see preceding case No. 80), upon like charges, except that in these no charge was made as to misrepresentations when the goods were purchased.

86 NOTTON vs. CIRCUIT JUDGE (Gogebic), No. 14446½.

To quash *capias ad respondendum* in an action for slander on the ground of the insufficiency of the affidavit.

Denied Oct. 4, 1894.

The affidavit alleged that relator said in a public speech before divers citizens of Ironwood, of and concerning affiant, who was then the president of the Metropolitan Land Co., a corporation, that affiant and another officer "were robbing the men (employees) and robbing the company;" that affiant and another officer "charged the men more for powder used than it was worth and put the difference in their pockets, thus robbing the men and robbing the company."

Relator insisted that the words are not actionable per se, and as no special damage is alleged, no complete cause of action is set forth in the affidavit.

87 McDERMID vs. CIRCUIT JUDGE (Wayne), No. 14121½.

To quash a *capias* because of the insufficiency of the affidavit.
Order to show cause denied April 3, 1894.

The affidavit set forth that to secure relator against a contingent liability, plaintiff deposited with him certain bonds; that plaintiff had since paid and discharged the contingent liability and demanded the bonds; that relator refused to surrender the bonds, and that said relator "did then and there convert the bonds to his own use."

Relator contended that the words quoted are simply a statement of a legal conclusion.

88 TRENERRY vs. CIRCUIT JUDGE (Wayne), No. 14698.

To quash a capias because of the alleged insufficiency of the affidavit.

Denied February 28, 1895, with costs.

Upon the motion to quash the following order was entered:

"Upon consent of defendants' attorney in open court, motion to quash capias denied with costs, on condition that bail be reduced from \$500 to \$200, and time extended fifteen days from date for putting in special bail."

89 MERCHANTS' NATL. BANK vs. CIRCUIT JUDGE (Muskegon), No. 12480½.

To reinstate order holding to bail.

Order to show cause denied January 5, 1892.

Relator, the designated depository of city funds, brought suit against John Wachsmuth, who was a member of the Common Council of said city, for an alleged slander. The latter introduced at a session of the council a resolution reciting in substance that inasmuch as a decree for a large amount of money had been rendered against the principal surety, upon relator's bond, the council did not deem it entirely safe to leave the city's moneys on deposit in said bank without additional security, and therefore be it resolved that an order be drawn for the amount of the

moneys upon deposit, and that the proceeds of said order be elsewhere deposited until additional security be given.

90 LANGTRY vs. CIRCUIT JUDGE (Wayne), 68 M., 451.

To set aside certain proceedings in attachment.

Granted February 2, 1888.

Held, that a writ of attachment does not operate as a summons, and that personal service of the writ, unless made after levy and accompanied by the statutory inventory, is insufficient to give jurisdiction over defendant.

90½ WILSON vs. CIRCUIT JUDGE (Genesee), No. 11249, 87 M., 493.

To quash a writ of attachment because signed by Marguerite E. Burr, who, under the constitution, is ineligible to the office of deputy county clerk.

Denied June 13, 1890.

Opinion filed October 6, 1891, holding that the office of county clerk is wholly ministerial, and when the law provides that a ministerial officer may appoint a deputy, for whose acts he and his sureties are responsible, and does not limit or restrict him as to whom he appoints, his choice is not confined to any race, sex, color or age.

91 AMERICAN BISCUIT & MNFG. CO. vs. CIRCUIT JUDGE (Gogebic), No. 12344.

To vacate order dissolving an attachment. It appeared that a motion had been made before a former circuit judge to quash the writ which was granted.

Denied November 17, 1891, without costs.

It was held that in order to lay the foundation for this application, respondent should first have been asked to do what it is now sought to compel the court to do.

92 ANDERSON vs. CIRCUIT COURT (Lenawee), No. 14742, 105 M., 89.

To vacate order quashing a writ of attachment because the copy served upon the defendant was not a certified copy.

Granted April 16, 1895, with costs against defendant.

Relator cited Leonard vs. Woodward, 34 M., 515; Stearns vs. Taylor, 27 M., 88.

93 BRADLEY vs. CIRCUIT JUDGE (Branch), 1 Doug., 319.

To quash an attachment.

Denied 1844.

It appears that the affidavit was not made before an officer authorized to take affidavits, but the court permitted plaintiff to file a new affidavit and then refused to grant defendant's motion to quash. Held, that the proper remedy in such case is certiorari. (But see No. 116.)

94 DETROIT PAPER & NOVELTY CO. vs. CIRCUIT JUDGE (Wayne), No. 12297½.

To compel respondent to quash a writ of attachment issued after commencement of suit under Howell's Sec. 8019, et seq., on the ground that the affidavit therefor was not filed with the clerk, but was attached to the writ.

Order to show cause denied October 28, 1891.

95 WELLING vs. CIRCUIT JUDGE (Antrim), No. 13287½.

To quash a writ of attachment.

Order to show cause denied January 18, 1893.

The motion to quash was based upon an affidavit, alleging that the real estate attached was the property of defendant's wife, having been conveyed to her by defendant; that at the time of

its conveyance the property was defendant's homestead; that defendant had no property in Antrim County, and therefore the court was without jurisdiction.

96 ROSEN vs. CIRCUIT JUDGE (Wayne), No. 14936.

To set aside a judgment and quash the writ of attachment by which the proceedings were instituted.

Denied October 10, 1895, with costs.

In February, 1894, the writ was issued out of the Wayne Circuit Court upon an affidavit setting forth that plaintiffs were residents of Chicago, Ill.; that the defendant (relator here) was a resident of Eaton County, Mich.; that defendant had no property in Eaton County and that there is no property of defendant subject to attachment within the County of Wayne.

Defendant was not served and did not appear.

Publication was had, defendant's default entered and judgment entered in July, 1894.

In April, 1895, defendant moved to set aside the judgment and quash the writ. (1), because plaintiffs were non-residents of the State of Michigan and defendant resided in Eaton County; and (2) because no affidavit of the commencement of publication was filed as required by Act No. 8, Laws of 1891.

The circuit judge permitted the affidavit to be filed nunc pro tunc and denied the motion to quash. Respondent cited *Stringer vs. Dean*, 61 M., 196.

97 ROSENBERG ET AL. vs. CIRCUIT JUDGE (Clinton), No. 14835½.

To compel the dismissal of a case commenced by attachment, where both plaintiffs and defendants are non-residents of the State.

Denied April 16, 1895.

Certain property was attached in Clinton County, but relators

insist that when the debtor is a non-resident, the creditor must be a resident of the State.

Citing, *Black on Judgments*, Sec. 904; *Moore vs. Circuit Judge*, 55 M., 84 (620); *Pennoyer vs. Neff*, 95, U. S., 565; *Freeman vs. Alderson*, 119 U. S., 185; *Towle vs. Wilder*, 57 Vt., 622; *Great Western Ry. Co. vs. Miller*, 19 M., 305; *Jacobson vs. Circuit Judge*, 76 M., 234 (14). See No. 342.

98 SCHLOSS ET AL. vs. CIRCUIT JUDGE (Washtenaw), 61 M., 267.

To vacate an order dismissing attachment proceedings, where relators, residents of Wayne County, sued out the writ in Washtenaw against one who resided and had property in Lenawee County, and levied it upon property in Washtenaw.

Denied April 29, 1886, with costs.

Held that the statutory provision requiring a writ of attachment to be sued out in the county where one of the parties resides if the debtor has property subject to attachment therein, is jurisdictional.

99 BAXTER vs. CIRCUIT JUDGE (Kent), No. 12806, 92 M., 291.

To vacate an order setting aside the service of a writ of attachment.

Denied June 10, 1892, with costs.

A return to a writ of attachment issued against two defendants, upon neither of whom personal service had been had, which fails to show that the property attached in the county where the suit was commenced was in the possession of, or belonged to, either of the defendants, will not authorize the issuance of a writ to another county, under How. Stat., 7316.

**100 AMERICAN BISCUIT & MNFG. CO. vs. CIRCUIT JUDGE
(Gogebic), No. 12787.**

To vacate order dissolving an attachment.

Granted June 22, 1892, with costs

Three persons were joined as defendants. Upon the execution of the writ the person in whose possession the property was found, executed a bond, under the statute, conditioned for the payment of any judgment that might be rendered, and the property was released.

The return day of the writ was December 2. The sheriff returned that on November 17 he served a certified copy of the attachment and inventory upon one of the defendants, and a copy of the writ upon each of the other two, and that on December 5 he served a certified copy of the attachment and inventory upon the two defendants upon whom he had on November 17 served a copy of the writ. The motion to dissolve set forth the failure of service of a certified copy of the attachment and inventory, within the life of the writ, upon two of the defendants.

Relator contended (1) that the service of the certified copy upon one of the joint defendants was sufficient. *Hubberton Lumb. Co. vs. Covert*, 35 M., 254; (2) that the execution of the bond ended the attachment proceedings under Sec. 8000, How. Stat., and that it was only necessary to serve a copy of the writ which operated as a summons. *Patch vs. Wessels*, 46 M., 249; *Paddock vs. Mathews*, 3 M., 18.

**101 GYPSUM PLASTER & STUCCO CO. vs. CIRCUIT JUDGE (Kent),
No. 13774, 97 M., 631.**

To vacate an order dismissing attachment proceedings, wherein it was sought to levy upon certain shares of stock issued by a Michigan corporation to defendant's manager as trustee, and in which the defendant had only a beneficial interest.

Denied November 28, 1893, with costs. Citing *Van Norman vs. Circuit Judge*, 45 M., 204. No. 827.

102 SAVIDGE vs. CIRCUIT JUDGE (Ottawa), No. 14499, 105 M., 257.

To compel respondent to set aside an order vacating a judgment in a case commenced by attachment, and dismiss the writ.

Denied May 21, 1895, with costs.

Writ of attachment issued returnable January 3, 1893. No personal service, publication made, the last being made February 9, 1893. Proof of publication made and declaration filed February 16, 1893. Default entered March 16, 1893. No affidavit of the commencement of publication was filed. April 16, 1893, property sold, bid in by plaintiff and passed out of the officers' hands into plaintiff's possession. May 6, 1894, the court vacated the judgment and dismissed the writ.

Respondent insisted that the judgment was void because the default was entered within thirty days after the filing of proof of publication, citing—*Woolkins vs. Hald*, 49 M., 299; *Sture vs. Vanderberg*, 67 M., 530; *King vs. Harrington*, 14 M., 532; *Wells vs. Walsh*, 25 M., 344; *Nugent vs. Nugent*, 70 M., 52; that the basis of the existence of the proceeding was the attachment of the property and its possession by the sheriff; that when the property was discharged from the levy by the voluntary act of the officer it could not be reclaimed by him, citing *Weber vs. Henry*, 16 M., 403; *Waples on Attachment*, pp. 7, 8, 9.

103 McGUIRE vs. CIRCUIT JUDGE (Saginaw), No. 14148, 101 M., 275.

To set aside an order vacating an attachment in a log lien suit on the ground that there was no proper service of the writ upon the principal defendant, or upon the log owners, or those in custody of the logs, no copy of an inventory having been served as required by the general attachment statute, How., Sec. 7991, nor was any made.

Granted June 26, 1894, with costs. Citing *Federspiel vs. Johnson*, 87 M., 303, and distinguishing *White vs. Prior* 88 M., 647.

104 BROWN ET AL. vs. CIRCUIT JUDGE (Saginaw), No. 12294.

To quash attachment under log lien law.

The proceedings were instituted by claimant for himself and

as assignee of several others, but in the statement of lien and affidavit for attachment the amounts due assignee and his assignors severally were not stated, and only the aggregate amount was given.

Granted October 29, 1891, with costs.

105 PACK WOODS & CO. vs. CIRCUIT JUDGE (Iosco), 70 M., 135.

106 WRIGHT ET AL. vs. CIRCUIT JUDGE (Iosco), 70 M., 146.

To compel respondent to quash writs of attachment in log lien suits, where several laborers had joined their claims for labor performed for a contractor, upon logs belonging to four several owners, and it was insisted that the affidavits were defective.

Denied May 3, 1888.

107 YONKER vs. CIRCUIT JUDGE (Muskegon), No. 12715½.

To dissolve attachment.

Order to show cause denied April 12, 1892.

The affidavit recited that defendant "is about to dispose of her property (with intent) to defraud her creditors, and has disposed of her property (with intent) to defraud her creditors," omitting the words in brackets.

108 NEDERLANDER vs. CIRCUIT JUDGE (Wayne), 55 M., 411.

To quash writ of attachment for defects in the affidavit, where the writ had been served both personally and upon property.

Denied January 6, 1885.

Held that the court would not interfere in this manner to inquire into the grounds of the motion.

109 SHELDON vs. CIRCUIT JUDGE (Wayne) (2 cases), Nos. 13121 and 13122.

To quash writs of attachment, issued for amounts not due, because of insufficiency of affidavits.

Orders to show cause issued Oct. 25, 1892.

Granted in default of answer January 4, 1893, with costs in each case.

110 MOSHER vs. CIRCUIT JUDGE (Bay), No. 15343; 66 N. W., 384; 2 D. L. N., 919.

To quash proceedings in attachment upon a claim not due, under Act No. 149, Laws of 1889.

Denied March 3, 1896, with costs.

Held that the act is constitutional and valid; that the affidavit for the issuance of a writ under this act should set forth, in addition to the showing necessary for the issuance of the ordinary writ, other additional facts sufficient to satisfy the circuit judge of the propriety of allowing the writ to issue before the debt is due, and that evidence of circumstances that indicate that the defendants' property was being disposed of or seized by others, and that there was danger that plaintiff might lose his claim, would be sufficient.

111 CLARK vs. CIRCUIT JUDGE (Clinton), No. 11752½.

To vacate order dissolving attachment.

Order to show cause denied February 4, 1891.

Attachment before debt due under Act No. 149, Laws of 1889. The only questions raised before respondent were the sufficiency of the affidavit and the constitutionality of the act, and those were the only questions considered on the application.

The circuit judge based his order of dissolution upon the insufficiency of the affidavit, holding that the affidavit must set

forth sufficient facts to satisfy the circuit judge of the necessity for the immediate issuance of the writ.

112 HOWELL vs. CIRCUIT JUDGE (Muskegon) (two cases), Nos. 12332 and 12333. 88 Mich., 361-369.

To quash writs of attachment issued under Act No. 149, Laws of 1889, upon debts not due.

Granted November 13, 1891, with costs.

Held, that "the reason for the issuance of the writ must be shown by facts and circumstances so given in detail as to enable the circuit judge to satisfy himself from such facts and circumstances that the writ ought to issue.

"It will not do for the affiant simply to swear that he knows that the defendant had assigned, disposed of, or concealed his property with intent to defraud his creditors, but the facts attending such disposition or concealment of the property must be set forth, and its relative value to that of the remainder of the property owned by the debtor, so that the circuit judge may know something about it, as well as the affiant.

"The fact that other creditors have levied upon a portion of the debtor's property, or that he has not sufficient property to pay his debts will not warrant the issuance of the writ; and the allegation that the plaintiff will lose his debt if the writ is not issued before the debt becomes due is an inference or conclusion of fact for the circuit judge to draw, and not the plaintiff, from the other facts and circumstances set out in the affidavit." Also that "before the clerk is authorized to issue a writ of attachment under Act No. 149, Laws of 1889 (3 How. Stat., Sec. 8016 a), the statutory affidavit must be presented to him, with the order of allowance of the circuit judge indorsed thereon."

The affidavit of exigency set forth that defendant on a day named had transferred to a bank in Chicago a very large amount of property; that he is in failing circumstances; that attachments aggregating many thousands of dollars have been issued out of

this court, and have been levied upon his property in Muskegon County, and that plaintiff will lose the amount of his claim unless the writ issue.

Relator insisted that the affidavits were jurisdictionally defective; that the Act referred to was unconstitutional, and that in one of the cases there was no debt within the contemplation of the Act, for the action was predicated upon commercial paper not made, but simply indorsed or guaranteed by defendant.

Relator cited, *Newman vs. Circuit Judge*, decided January 28, 1890, but not reported, in which it was held that the allowance of a writ of attachment before debt due is an unusual and extraordinary remedy; that the statute authorizing it must be strictly followed, and the analogies of practice in cases under the fraudulent debtors' act and injunction cases are applicable to this class of cases.

Sheridan vs. Briggs, 53 M., 659; *Proctor vs. Prout*, 17 M., 473; *Marble vs. Curran*, 63 M., 288. Upon the last point relator cited *Black vs. Zacharie*, 3 How. (U. S.), 139; *Bank vs. Moss*, 6 So. Rep., 25.

113 WILSON ET AL vs. CIRCUIT JUDGE (Clare), No. 15414.

To dissolve an attachment.

Denied March 12, 1896, with costs.

The affidavit alleged (1) that defendants fraudulently contracted the debt, (2) that defendants had assigned and disposed of their property with intent, etc., and (3) that defendants were about to assign and dispose of their property with intent, etc.

Relator insists that the opinion filed by the court on the motion to dissolve is inconsistent with his refusal to dissolve the attachment.

114 McCREA vs. CIRCUIT JUDGE (Muskegon), No. 13978, 100 M., 375.

To compel respondent to vacate an order quashing a writ of attachment in an action of tort.

Denied May 22, 1894, with costs.

The question involved was the sufficiency of the affidavit.

115 SWORD ET AL. vs. CIRCUIT JUDGE (Lenawee), 71 M., 284.

To dismiss attachment proceedings, on the ground that the affidavit, upon which the writ is based, is insufficient.

Denied July 11, 1888.

Held, that the allegation that two defendants, naming them, are justly indebted to the plaintiff, imports a joint indebtedness, and that an averment that such debt is due from one of said defendants, necessarily avers that it is due from both.

116 MILLER vs. CIRCUIT JUDGE (Bay), 41 M., 326.

To vacate an order quashing an attachment.

Granted July 1, 1879.

The court below held the affidavit insufficient in the allegation as to the indebtedness, but the Supreme Court held otherwise, and that, as the order made was interlocutory not touching the merits, mandamus is the only adequate remedy to vacate it. The affidavit set forth that several parties, naming them, a co-partnership under the firm name, etc., are indebted, etc. It was insisted that we have statutes relating to promissory notes and bills whereby parties who are not joint obligors may be united in one suit and that this affidavit does not exclude the possibility of such a case. See No. 93.

117 FISHER ET AL. vs. CIRCUIT JUDGE (Marquette), 58 M., 450.

To vacate an order quashing on motion a writ of replevin, because a cross replevin.

Granted November 18, 1895.

Held, that the second writ cannot be superceded or quashed for that reason on motion. It should be pleaded in bar or in abatement.

118 BELL ET AL. vs. CIRCUIT JUDGE (Mecosta), 26 M., 413.

To compel respondent to set aside an order granting an alias writ of replevin, where it appeared that upon the original writ the goods described therein were seized and turned over to plaintiff but the writ had not been served on the defendants on or before the return day thereof.

Denied January 14, 1873.

119 WITT vs. CIRCUIT JUDGE (Macomb), No. 12691.

To quash writ of replevin.

Mandate issued directing court to set aside service without prejudice to plaintiff's right to move for an alias, April 20, 1892, without costs.

The officer failed to serve a certified copy of the writ upon defendant in replevin, although the return showed such service, and the circuit judge held the return to be conclusive.

120. LANAHAHAN ET AL. vs. CIRCUIT JUDGE (Kent), No. 15128, 106 M., 685.

81

To dismiss replevin proceedings against non-residents, commenced January 21, 1893, where an alias and several pluries writs had been allowed, the last of which, issued February 18, 1894, had not been returned.

Granted October 22, 1895, with costs.

121 WILLIAMS vs. CIRCUIT JUDGE (Clare) No. 11783.

To compel respondent to vacate an order allowing an alias writ of replevin.

Granted February 25, 1891, with costs.

In November, 1889, the first writ was issued out of the Clare circuit, at the instance of one Hall for the recovery of a quan-

tity of logs in a lake upon which relator's property abutted. When the demand was made, and when the sheriff seized the logs, relator disclaimed any interest in or claim upon said logs, or right to possession thereof, and denied having either actual or constructive possession, but insisted that the logs could and should be removed from the lake across other lands, and not through or over relator's lands; that the sheriff afterwards made return of the service, reciting the seizure, the giving of bond by plaintiff, and the delivery of the logs to said plaintiff; that afterwards, on January 12, 1891, after the cause had been at issue since December 26, 1889, and had been noticed for trial for several terms of court, plaintiff moved the court for an alias writ, setting forth that the return was incorrect in that the logs had not been delivered to plaintiff, and asking that the sheriff be allowed to file an amended return.

The amended return was allowed and afterwards filed, and showed that relator had refused to allow the logs to be taken across his premises, and that in consequence the sheriff was unable "to deliver the logs out of the lake to plaintiff," whereupon plaintiff took out the alias writ.

Relator insisted that the only issue between himself and plaintiff in the replevin suit was the right of plaintiff to take the logs, by a short cut, over relator's lands to the railroad, and that after issue joined and such a lapse of time plaintiff was not entitled to the alias writ. Citing, *Pierce vs. Rehfus*, 35 M., 53; *Montgomery vs. Merrill*, 36 M., 97; *Gray vs. Circuit Judge*, 49 M., 628 (531); *Low vs. Ct. J.*, 61 M., 35 (722).

122 DAMM ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 14026½.

To quash a writ of replevin issued against relators as co-partners under the name of Fred H. Marion & Co., because the affidavit alleged that the goods had not been seized under any execution or attachment against the goods or chattels of the said "Fred H. Marion & Co." liable to execution, whereas the statute, How., Sec. 8321, requires that it shall state that the prop-

erty has not been seized under any execution, etc., against the goods and chattels of such plaintiff, liable to execution.

Order to show cause denied February 13, 1894.

123 TAYLOR vs. CIRCUIT JUDGE (Kalamazoo), No. 14138, 100 M., 181.

To compel respondent to quash a writ of replevin and dismiss the proceedings, for the reason that the affidavit stated that the property had not been taken for "any taxes or fine levied," etc., omitting the word "assessment."

Denied May 4, 1894, without costs.

The circuit judge permitted an amendment and the court held that the matter was within the discretion of the circuit judge. *Baker vs. Dubois*, 32 Mich., 92.

124 FOWLER ET AL. vs. CIRCUIT JUDGE (Wayne), No. 11919½.

To compel respondent to set aside a writ of replevin, because the affidavit did not state that it was made on behalf of the plaintiff, or that affiant had a knowledge of the facts set forth.

Order to show cause denied April 8, 1891.

125 HALL vs. CIRCUIT JUDGE (Wayne), No. 15864½.

To quash a writ of replevin.

Order to show cause denied October 20, 1896, on the ground that mandamus is not the proper remedy.

126 HARVEY vs. CIRCUIT JUDGE (St. Joseph), 63 M., 572.

To vacate an order dismissing an appeal to the Circuit Court from the determination of the circuit judge, in proceedings had before him, to dissolve an attachment.

Denied November 11, 1886.

127 STALL vs. DIAMOND, 37 M., 429.

Error lies rather than mandamus where the error is disclosed on the record, as where the grounds for dismissing an appeal are stated in the order.

Decided October 23, 1877.

128 PALMER vs. CIRCUIT JUDGE (Jackson), No. 12492, 90 M., 1.

To compel the dismissal of an appeal from the Probate Court. Granted January 20, 1892, without costs.

Relator prayed the Probate Court that Annis Campbell be cited in under the provisions of Howell's, Sec. 5876. On the day set for hearing Annis Campbell appeared by attorney. Counsel were heard as to the method of conducting the examination; the court fixed a day, and ordered that the examination be had upon oral interrogatories before a stenographer, but that the questions and answers be written out, signed by said Annis Campbell, and filed in the court. Notice of appeal was then given, which was allowed by the Probate Court. Relator moved, in the circuit, to dismiss the appeal upon the grounds that it did not lie, but respondent refused to dismiss.

Held, that the order was not appealable.

Respondent's counsel cited, Arnold vs. Sabin, 4 Cush., 46; Martin vs. Clapp, 99 Mass., 470; Holbrook vs. Cook, 5 M., 229; Perrin vs. Circuit Judge, 49 M., 345; Perrin vs. Lepper, 77 M., 489; Showers vs. Morrill, 41 M., 700; Wisner vs. Mabley's Estate, 74 M., 143; Mowers' Appeal, 48 M., 451; 2 Woerner's Law of Admrs., 1198.

129 MONROE vs. CIRCUIT JUDGE (Wayne), 19 M., 296.

To re-instate the appeal of relator from an order of the judge of probate, confirming the report of a guardian's sale of real estate.

Denied October 26, 1869.

Relator claimed to have been the highest bidder at the sale,

and appealed from the order confirming it. The circuit judge dismissed the appeal on the ground that the confirmation was unnecessary.

Held, that the confirmation of the report of the sale was necessary to its validity, but that to entitle a party to a mandamus he must show a clear legal right and that he has no other adequate remedy.

And that the guardian had a right to disregard relator's bid, if the bidder neglected to offer compliance with the terms of sale within a reasonable time, and that relator's allegations with respect to the tender of performance were vague and uncertain.

130 WOOD (Guardian) vs. CIRCUIT JUDGE (Wayne), 48 M., 641.

To compel respondent to dismiss an appeal from the Probate Court on the ground that the surety's name to the appeal bond was signed by "the attorney in fact" of the surety.

Denied April 5, 1882.

131 SANBORN vs. CIRCUIT JUDGE (St. Clair), No. 12791, 94 M., 519.

To vacate an order allowing an appeal from Probate Court after the expiration of the statutory time therefor.

Denied February 3, 1893, with costs.

The application for allowance of appeal was made under How. Stat., 6784, and the petition therefor was held sufficient to call for the exercise of the judgment of the court upon the questions whether the petitioners were without default, and whether justice required recognition of the case, and that judgment will not be disturbed by mandamus. *Smith vs. Circuit Judge*, 82 M., 93 (153).

The cause was made a docket case. Return was filed May 18, 1892. A further and corrected return was filed May 28, 1892.

Cause stricken from docket June term 1892. Death of party suggested. Case continued over November term on payment of costs.

132 DURAND (Admr.) vs. CIRCUIT JUDGE (Saginaw), 76 M., 624.

To compel the dismissal of an appeal from the Probate Court.
Denied October 18, 1889.

A claim had been disallowed by commissioners on claims. Claimant, after the allowance of an appeal, but before filing the proper papers in the Circuit Court, secured the appointment of a third commissioner under Act No. 109, Laws of 1883, and the commission so constituted allowed the claim. On appeal by the administrator this action was held void and after filing the proper transcript claimant sought to proceed upon his appeal. The administrator moved to dismiss.

Held, that the writ is not one of right, and the court is not disposed to use it on technical grounds to deprive a suitor of his day in court, and that prior to the passage of Act No. 175, Laws of 1887, the Circuit Court had power to entertain an appeal, although the transcript was not filed within the time limited by How. Stat., Sec. 5911.

133 FOX vs. PROBATE JUDGE (Wayne), 48 M., 643.

To compel respondent to allow an appeal.

Order to show cause denied June 13, 1882.

Held that the allowance of an appeal from a Probate Court does not depend upon the probate judge, but is a right fixed by statute, and an order of allowance is unnecessary.

134 STORMS vs. CIRCUIT JUDGE (Allegan), No. 13966, 99 M., 144.

To vacate an order dismissing relator's appeal from an order of the Probate Court, denying his application for discharge from

guardianship as an incompetent person; to reinstate the case and hear the appeal on the merits.

Denied February 20, 1894.

Held, that mandamus will not lie in such case where it appears that the citation was directed to the guardian, mother, two sisters and wife of the incompetent, all of whom, except the wife, resided in this State, and the files in the Probate Court failed to show service, either actual or constructive, upon the wife or sisters.

135 SPARROW vs. CIRCUIT JUDGE (Ingham), No. 15551; 67 N. W., 112; 3 D. L. N., 79.

To dismiss an appeal from an order of the Probate Court adjudging a person insane under Act No. 204, Laws of 1895.

Granted May 12, 1896, without costs, on the ground that such an order is not appealable under Sec. 6779, How. Stat.

136 LORIMER vs. CIRCUIT JUDGE (Wayne), No. 16275.

To reinstate an appeal from an order of the Probate Court denying to relator, who claims to be the widow of Thomas Lorimer, deceased, an allowance out of the estate of said decedent.

Denied with costs, May 5, 1897.

The appeal was dismissed on the ground (1) that the appellant is not the widow of the deceased; (2) there is no personal estate belonging to the deceased from which an allowance can be made, and (3) that the order of the Probate Court denying the appellant's petition is not an appealable order.

137 STEWART (Admr.) vs. CIRCUIT JUDGE (Wayne), No. 12689.

To vacate order allowing an appeal from probate of will.

Will admitted June 30, 1891. Petition for leave to appeal filed March 1, 1892.

In the meantime the executors named in the will had declined to accept, and relator, on petition of the appellant, was appointed administrator with the will annexed, had qualified, and commissioners on claims were appointed.

Denied April 21, 1892, with costs.

138 KING vs. CIRCUIT JUDGE (Ingham), 69 M., 84.

To vacate an order denying a motion to dismiss an appeal from the Probate Court.

Denied March 2, 1888.

The grounds of the motion to dismiss were, (1) that the appeal was made in the name of the administrator and the administrator had declined to join therein; (2) that the application was made before the expiration of the time within which the administrator was allowed to appeal. The other objections relate to defects in the bond.

Held, that the statute authorizing heirs-at-law to appeal from the allowance of a claim against an estate, where the administrator declines and fails so to do, authorizes them to defend the proceedings in the Circuit Court, and to control and maintain said defense; that a bond given by heirs on appeal running to claimants alone, but conditioned to pay all damages and costs to claimant and to the estate, is sufficient to confer jurisdiction to allow the appeal; and that if a bond given on appeal from the Probate Court is defective, the remedy is not by dismissing the appeal in the first instance, absolutely, but conditionally in case a new bond shall not be filed within a reasonable time, fixed by the court, under How. Stat., Sec. 7771.

139 CRITTENDEN (Guardian) vs. CIRCUIT JUDGE (Macomb), No. 13858, 97 M., 637.

To vacate an order dismissing an appeal from an order of the Probate Court, admitting a will to probate.

Denied Dec. 13, 1893, with costs, on the ground that relator had a remedy by certiorari, which had been lost by lapse of time, and mandamus will not be granted to extend the time beyond that limited for bringing certiorari. See No. 146.

140 WALLACE (Admr.) vs. CIRCUIT JUDGE (Wayne), No. 12494.

To compel dismissal of an appeal from the Probate Court.

Granted February 3, 1892, with costs.

The order appealed from was entered March 28, 1891. Within 60 days appellants left in the Probate Court a bond and a notice, with reasons for the appeal. The attention of the probate judge was called to said papers by the register, and the latter was directed to telephone to the attorney for appellant, directing him to bring in the surety on the bond. This was not done, however, until some time in the latter part of August, 1891, and on the 1st day of September, 1891, said bond was approved and notice ordered given to relator.

The attorney for appellant then ordered a transcript, and on September 16, said attorney was notified of its completion, but the same was not filed in the Circuit Court until December 7, 1891.

**141 CHEEVER ET AL. (Executors) vs. CIRCUIT JUDGE (Wash-
tenaw), 45 M., 6.**

To compel respondent to hear an appeal by executors from an order of the Probate Court, disallowing a will.

Granted November 10, 1880.

Held, that the executors may appeal from the disallowance of a will although all the other persons interested may unite in the settlement of the estate and oppose the appeal.

142 SABIN vs. CIRCUIT JUDGE (Hillsdale), No. 14499½.

To compel the dismissal of an appeal from an order of the Probate Court disallowing the probate of an alleged will.

Order to show cause denied November 20, 1894.

Relator and Frances E. Hawley are the only heirs of Samuel S. Sabin, who died leaving an instrument purporting to be his last will, in which certain bequests were made to relator and said Frances E. Hawley, and upon the happening of a certain contingency, to Clare W. and Harry G. Hawley, minor children, of said Frances E. Relator petitioned for the probate of said instrument. Frances E. was advised that the instrument was void upon its face and acting thereon, offered its probate, and, relator consenting, an order was made disallowing the instrument.

Subsequently relator produced a prior will more favorable to himself, of the existence of which Frances E. was ignorant, and presented the same for probate. Thereupon Frances E., on behalf of herself and her two children appealed to the Circuit Court, from the order of disallowance.

Relator moved the Circuit Court to dismiss the appeal because (1) the instrument had been disallowed at the instance of Frances E., and (2) that Clare W. and Harry G. Hawley were minors, and no next friend or guardian had been appointed before appeal taken. On the application to dismiss, a petition was filed asking for the appointment of a next friend, and in the order denying the motion the court made the appointment.

143 LYON (Executor) vs. CIRCUIT JUDGE (Berrien), No. 14135.

To vacate order allowing an appeal from the probate of a will.

Denied April 27, 1894, with costs.

The petition for leave was filed on behalf of a minor heir, residing in Nebraska, by his guardian, appointed since the probate of the will, and alleged, amongst other things, that neither the minor nor his parents had any knowledge or notice of the

proceedings to probate the will or of its probate until too late to appeal.

Upon the motion to set aside the order, the only point made was as to the sufficiency of the petition and its verifications, the jurat setting forth that "the same is true to the best of his knowledge, information and belief."

144 STRANG vs. CIRCUIT JUDGE (Hillsdale), No. 15273; 65 N. W., 968; 2 D. L. N., 827.

To vacate an order dismissing an appeal from an order of the Probate Court admitting a will to probate, unless notice of the appeal be given to certain residuary legatees under the will.

Denied January 28, 1896, with costs.

145 MERRIMAN ET AL. vs. CIRCUIT JUDGE (Jackson), No. 13575, 96 M., 603.

To compel respondent to vacate an order permitting an appeal to be taken from an order admitting a will to probate.

Denied July 26, 1893, with costs. Rehearing denied Nov. 21, 1893.

After the final determination in No. 150, the contestant applied to the Circuit Court, which allowed an appeal under How. Stat., Sec. 6784.

Held, that a party ought not to lose his right to an appeal through the neglect or oversight of his attorney. Citing Loree vs. Reeves, 2 M., 133; Capwell vs. Baxter, 58 M., 571.

146 ELLAIR vs. CIRCUIT JUDGE (Wayne), 46 M., 496.

To vacate an order restoring an appeal from the probate of a will, which had been dismissed over three years before.

Granted July 1, 1881.

Held, that the dismissal was a final judgment and no writ of error or certiorari would lie after the lapse of two years unless in excepted cases. See No. 139.

147 HYATT ET AL. vs. CIRCUIT JUDGE (Hillsdale), No. 15496.

To dismiss an appeal (allowed April 22, 1895), from an order of the Probate Court admitting a will to probate, on the ground (1) that none of the papers required by Act No. 174, Laws of 1887, 3 How. Stat., Sec. 6782, were filed until July 9, 1895, and (2) that no notice had been given to relators who were residuary legatees under the will.

Denied April 7, 1896, with costs.

Two motions to dismiss were made. On the first the only point raised was as to the question of notice, and the court ordered notice to be given. *Strang vs. Circuit Judge*, 65 N. W., 968, (144.)

Before the second motion was made, the papers referred to were filed. *Snyder vs. Circuit Judge*, 80 M., 511 (149.)

148 FISHER (Admr.) vs. CIRCUIT JUDGE (Kalamazoo), No. 11750.

To dismiss an appeal from disallowance of a claim by commissioners on claims in the Probate Court.

Denied February 3, 1891, with costs.

The facts are similar to those in *Snyder vs. Circuit J.*, No. 149.

149 SNYDER vs. CIRCUIT JUDGE (Washtenaw), 80 M., 511.

To dismiss an appeal from the allowance of a claim by commissioners on claims in the Probate Court.

Denied May 9, 1890.

Held, that an appeal properly claimed, perfected and allowed

in the Probate Court ought not to be dismissed for failure to file the record in the Circuit Court within the thirty days limited by Act. No. 175, Laws of 1887, if such record is filed before the motion to dismiss is actually heard.

150 MERRIMAN vs. CIRCUIT JUDGE (Jackson), No. 13329, 95 M., 277.

To compel the dismissal of an appeal from Probate Court.

Granted April 7, 1893, with costs.

Held, that Act No. 174, Laws of 1887, 3 How. Stat., Sec. 6782, which requires the filing in the circuit of a certified copy of the record of proceedings appealed from, within thirty days after the appeal is taken, is mandatory.

151 PRICE vs. CIRCUIT JUDGE (Wayne), No. 15873.

To reinstate an appeal from the report of commissioners on claims, which was dismissed because a certified copy of the record of the proceedings appealed from had not been filed within thirty days after appeal taken.

Denied November 12, 1896, with costs.

152 GORTON vs. CIRCUIT JUDGE (Livingston), No. 13773, 97 M., 561.

To vacate an order dismissing an appeal from the Probate Court.

Granted November 24, 1893. Ruled by Snyder vs. Circuit Judge, 80 M., 511, No. 149.

Held, that it was not intended by Merriman vs. Circuit Judge, 95 M., 277 (144), to hold that the failure to perfect an appeal from Probate Court within thirty days limited by Act. No. 174, Laws of 1887, might not be waived, nor to overrule Snyder vs. Circuit Judge.

153 SMITH vs. CIRCUIT JUDGE (Wayne), 82 M., 93.

To compel respondent to allow an appeal from the report of commissioners on claims disallowing relator's claim against the estate of a deceased person.

Denied July 2, 1890, on the ground that it clearly appeared that the discretion imposed in respondent had not been abused.

154 BUCHOZ (Admr.) vs. PRAY, 36 M., 429.

The duty of commissioners on claims in the Probate Court to report the proof of a contingent claim presented to them, is not judicial, but ministerial, and its omission cannot be remedied, rectified or redressed by appeal; its observance must be enforced by warrant (Comp. Laws 1871, Sec. 5200, How. Ann. Stat., Sec. 8544), or by mandamus, or by attachment, or the proof must be supplied, if necessary, in some special way.

155 MILNE vs. CIRCUIT JUDGE (Wayne), No. 12478½.

To compel granting of leave to appeal from report of commissioners on claims.

Order to show cause denied January 5, 1892.

The last meeting of the commissioners was fixed for January 15, 1890. Report filed March 5, 1891. Application for leave to appeal made in October, 1891.

156 COMSTOCK ET AL vs. CIRCUIT JUDGE (St. Clair), No. 13263, 95 M., 48.

To compel respondent to set aside an order dismissing an appeal from the Probate Court by consent of the appellant, and to permit relators, who were not parties to the appeal, although interested in the estate, to appear and prosecute.

Denied March 10, 1893, with costs.

157 DANIELS ET AL. vs. CIRCUIT JUDGE (St. Clair), 60 M., 213.

To dismiss an appeal from commissioners on claims because bond was given to administrators and not to relators, heirs at law of deceased and adverse parties, they having assumed the burden of resisting the claim.

Denied February 17, 1886.

158 RAYMOND vs. CIRCUIT JUDGE (Wayne), No. 13093½.

To compel respondent to set aside an order allowing an appeal from the report of commissioners on claims.

Order to show cause denied October 4, 1892.

Appellant had within sixty days filed a notice of appeal and bond; said papers were filed in the absence of the probate judge, but the register was present and informed appellant's attorney that he would call the attention of the judge of probate to the matter, and if he did not approve the bond, would notify him; that the attention of the judge of probate was not called to the matter until twenty days after the sixty days had expired.

159 FRANK vs. CIRCUIT JUDGE (Wayne), No. 13155.

To set aside an order dismissing an appeal from the Probate Court.

Granted December 1, 1892, with costs.

Relator presented a claim to commissioners on claims appointed by the probate judge of St. Clair County. Her claim was disallowed. The administrator claimed that the report was filed March 7, but it was claimed that when so filed the commissioners had not signed the report, and it was afterwards sent to the commissioners for signature, who signed and returned it about March 20.

Relator perfected her appeal May 7. On behalf of the estate a motion was entered in the St. Clair circuit, to dismiss

the appeal, but it was not there heard. Afterwards the administrator applied for the removal of the cause to the Wayne Circuit Court, and it was so removed. A new motion to dismiss was there entered, and at the hearing the appeal was dismissed. The contention was made that at the time of the final report of the commissioners the report was actually signed, but it appeared very clearly that the attorneys for relator were informed on and after March 7 that it had not been signed, and had been sent to the commissioners for signature.

160 LAIRD ET AL. vs. CIRCUIT JUDGE (Wayne), No. 14062.

To grant an appeal from an allowance by commissioners on claims against the estate of one Laird.

Granted May 4, 1894, without costs.

James Laird died at Detroit, January 10, 1894, leaving a will wherein he devised a house and lot to his son, Charles Laird, with whom he had resided, directing that within two years Charles Laird should pay the sum of \$1,000 to the executors, who, after paying the lawful debts of the estate, should divide the residue of said sum, together with the proceeds of other property, among relators who resided at Dundee, Scotland. Charles was nominated as one of the executors. The will was probated and commissioners on claims were appointed, to whom Charles presented a claim for board and attendance upon decedent, which was allowed at \$1,248.

Relators set forth that while they had knowledge of the death of their father and of the probate of the will, they had no knowledge of the existence of such a claim, nor of its presentation or allowance until the statutory time for appeal had lapsed.

161 FRAZER (Admr.) vs. CIRCUIT JUDGE (Lapeer), 48 M., 176.

To prohibit respondent from hearing an appeal from the disallowance of a claim against the estate of relator's decedent,

which had been transferred from the St. Clair circuit because of the disqualification of the judge of that circuit.

Denied April 19, 1882. See No. 293.

162 CROUCH vs. CIRCUIT JUDGE (Wayne), 52 M., 596.

To compel respondent to reinstate an appeal from the allowance, by probate commissioners, of claims against the estate, which was dismissed because not taken by the administrator but by a party in interest.

Granted February 6, 1884.

Held, that a party in interest may take an appeal in such case if the administrator declines to, and if the probate judge allows an appeal to someone else he thereby passes upon the fact of the administrator's refusal.

163 OSMUN vs. CIRCUIT JUDGE (Oakland), No. 15153; 2 D. L. N., 589; 64 N. W., 949.

To dismiss an appeal taken by relator from the report of commissioners on claims and set aside the order of the commissioners making the allowance, on the ground that the claim is a contingent one under 3 How. Stat., Sec. 5932, and that the sole duty of the commissioners was to take the proofs and report the same to the Probate Court.

Denied November 5, 1895, with costs, on the ground that a claim upon a note, payable absolutely, secured by a real estate mortgage, is not, as between the holder and the estate of the maker, a contingent claim.

164 TAYLOR vs. CIRCUIT JUDGE (St. Clair), 32 M., 95.

To require respondent to reinstate a case which had been removed by certiorari directed to the circuit court commissioner,

to review proceedings dissolving an attachment, and to hear and determine it on its merits, the court having refused to hear it, on the ground of want of jurisdiction.

Granted April 30, 1875. See Nos. 220, 1479.

165 COLE vs. CIRCUIT JUDGE (Wayne), No. 14991, 106 M., 692.

To vacate an order dismissing an appeal from a judgment of restitution rendered by a circuit court commissioner, for defective bond, the sureties thereon not having justified and no new bond having been proffered.

Denied October 22, 1895, with costs.

166 FELCHER vs. CIRCUIT JUDGE (Wayne), No. 13888½, 97 M., 633.

To vacate an order requiring relator to file an additional appeal bond, upon appeal from a judgment in summary proceedings to recover the possession of land, because of insufficiency of the sureties on the original bond.

Order to show cause denied December 12, 1893.

Held that there is no occasion for interfering with the discretion of the circuit judge by mandamus, where relator could have filed a new bond or made a showing of the sufficiency of the sureties before the Circuit Court.

167 ROGERS vs. CIRCUIT JUDGE (Chippewa), No. 16392.

To vacate an order compelling a circuit court commissioner to make return to an appeal from the determination of such commissioner to the Circuit Court.

Denied July 13, 1897.

Relator insists (1) that the appellant did not pay or tender full costs to the commissioner within the time limited therefor, and (2) that the sureties on the appeal bond did not justify.

It appeared, however, that within the time limited for appeal the

appellant filed an affidavit and bond, inquired as to the costs, paid the amount named and the commissioner approved the bond and gave a receipt in full for costs and fees; that some days afterwards and after the time limited for taking the appeal had expired, the commissioner wrote to the attorney for appellant stating that he had investigated the bondsmen and would not accept them, and that there was still due him as costs on appeal \$3; that the attorney for appellant called upon the commissioner, requested him to make return to the appeal, stating that if further bonds were required by the Circuit Court they would be furnished, and tendered the costs claimed which the commissioner refused to accept.

168 McMAHON vs. CIRCUIT JUDGE (Iron), No. 13090.

To dismiss appeal from circuit court commissioner.

Ordered that within 20 days after notice appellant file in the Circuit Court a bond approved by the circuit court commissioner, otherwise that the appeal be dismissed, November 16, 1892, with costs.

The proceeding was to recover possession of certain premises and complainant recovered judgment. Defendant appealed, filing a bond in the sum of \$200, approved by the county clerk. Relator insisted that the bond did not cover the rental value of the premises, or contain the condition that defendant in case complainant obtained restitution, would pay the rent due, under Sec. 8307, How. Stat. That section provides that the same proceedings shall be had upon appeal, as in cases of appeals from judgment rendered before a justice of the peace. How., Sec. 7000, as amended in 1885, provides that the bond may be taken by the justice or by any other justice of the peace of the same county, or by the county clerk of said county, but it was held that the statute in force in 1851 controlled. See How. Stat., Sec. 7000; 2nd Comp. Laws, 1857, Sec. 3837.

169 VINCENT vs. BOWES, 78 M., 315.

Error to Mecosta.

The action of the Circuit Court in denying an application for

leave to appeal from a justice's judgment under How. Stat., Sec. 7005, on the ground that the appellant was prevented from taking an appeal within the statutory time by causes beyond his control, can only be reviewed by mandamus.

Writ dismissed December 28, 1889.

170 COMSTOCK vs. CIRCUIT JUDGE (Wayne), 30 M., 98.

To vacate an order dismissing an appeal from the determination of a justice of the peace.

Granted July 21, 1874.

Relator commenced a suit before a justice, who dismissed it on motion, for want of jurisdiction, by reason of an alleged defect in the summons, and the Circuit Court dismissed the appeal, on the ground that the decision of the justice was not a judgment and therefore not appealable.

Held, that the determination of the justice was equivalent to a judgment of non-suit and appealable, and that mandamus is the proper remedy, as a return to a writ of error would not regularly disclose the whole proceedings on the motion to dismiss, or the grounds of the dismissal.

171 DETROIT & BIRMINGHAM PLANK ROAD CO. vs. CIRCUIT JUDGE (Wayne), 27 M., 303.

To vacate an order dismissing an appeal from Justice Court, and allow relator to file a new affidavit and bond.

Granted May 14, 1873.

Held, that an appeal from a justice cannot be dismissed absolutely for defects and informalities in the affidavit and bond, where the appellant tenders a new and proper affidavit and bond; that the proper practice on motion to dismiss an appeal for such defects is to make an order nisi that the appeal be dismissed, unless within the time specified a new and correct affidavit and bond be filed, and that mandamus is the proper remedy where an appeal has been improperly dismissed for such defects.

172 HAMILTON vs. CIRCUIT JUDGE (Wayne), 52 M., 409.

To reinstate an appeal from a judgment rendered by a justice, which had been dismissed because the affidavit for the appeal was not signed nor sworn to.

Granted January 23, 1884.

Held, that the affidavit must be treated as defective under How. Stat., Sec. 7020; that the court should have permitted a perfect affidavit to be filed, if needful to sustain the appeal, but it was not needful after the appellee had appeared and noticed the case for trial, the defect being thereby waived.

173 BROWER ET AL. vs. CIRCUIT JUDGE (Wayne), 1 M., 359.

To vacate an order dismissing an appeal from a judgment of a justice of the peace.

Denied 1850.

The order of dismissal is a judgment that may be reviewed within the meaning of Laws 1849, Sec. 67, p. 288.

A mandamus will be allowed to set an inferior court in motion, but not for the purpose of requiring the court to come to any particular conclusion, or retrace its steps where it has already acted.

174 KEAL vs. CIRCUIT JUDGE (Wayne), 36 M., 331.

To compel respondent to reinstate an appeal from a judgment by a justice of the peace, where the appeal had been dismissed because only one of several co-defendants had appealed.

Granted April 18, 1877.

175 BENSON vs. CIRCUIT JUDGE (Gratiot), No. 12057.

To compel respondent to dismiss appeal from Justice Court.

Granted July 1, 1891, with costs.

The judgment was rendered in November, 1889. The appeal was taken, but no return was made until February, 1891.

176 REYNOLDS vs. CIRCUIT JUDGE (Macomb), 1 M., 134.

To compel respondent to allow an appeal from a judgment recovered before a justice of the peace, in a case where relator, the defendant, had given security for stay of execution, and thereafter attempted to appeal.

Denied 1848.

177 McCORMICK HARVESTING MACH. CO. vs. CIRCUIT JUDGE (Hillsdale), No. 12057½.

To compel vacation of order dismissing an appeal.
Order to show cause denied June 18, 1891.

178 ALDRICH vs. CIRCUIT JUDGE (Clinton), 49 M., 609.

To require respondent to vacate an order reinstating an appeal from a judgment of the justice, after it had been dismissed.

Denied January 10, 1883.

Held, that an appeal may be reinstated in the discretion of the circuit judge, upon statutory excuses for the default, notwithstanding the fact that the transcript of the judgment has been filed meanwhile, and execution issued thereon.

179 ALLEN vs. CIRCUIT JUDGE (Kent), 37 M., 473.

To vacate order dismissing appeal from Justice Court.
Granted October 24, 1877.

The circuit judge assumed that the act creating the Superior Court (Laws of 1875, p. 42, Laws of 1877, p. 138), divested the

circuit of jurisdiction and conferred it upon the Superior Court in cases where one of the parties was a resident of the city.

Held, that the Circuit Courts and Justice Courts are constitutional courts, and the jurisdiction conferred upon them is beyond the reach of legislation.

180 GOLDHAMER vs. CIRCUIT JUDGE (Wayne), No. 15176; 65 N. W., 97; 2 D. L. N., 642.

To compel vacation of order granting leave to appeal from a judgment of \$25 and costs, rendered by a justice of the peace where circuit judge returns that leave was granted under the third subdivision of Act No. 460, Local Acts 1895.

Granted December 3, 1895, with costs, holding that said act cannot be construed as giving the Circuit Court discretionary power with respect to dilatory appeals.

181 SWEGLES vs. CIRCUIT JUDGE (Wayne), No. 15684; 68 N. W., 649; 3 D. L. N., 521.

To vacate an order permitting appellant (defendant) to dismiss an appeal from the judgment of a justice, "on payment to the clerk of \$5 over and above the judgment below" (which was for \$5 and costs), and allow full statutory costs under How. Stat., Sec. 7021.

Denied without costs, October 20, 1896, on the ground that relator's motion in the court below should have been to vacate the order made and not for full costs, in the face of the order.

Held, that under the statute appellee was entitled to costs.

182 ENGEL vs. CIRCUIT JUDGE (Wayne), No. 14959, 106 M., 654.

To vacate an order dismissing an appeal from a Justice Court where the judgment was for less than \$50.

Denied October 8, 1895, without costs.

This cause and No. 623 were brought to test the constitutionality of the Local Act of 1895, enlarging the jurisdiction of Justices' Courts in the City of Detroit, and limiting appeals therefrom to cases where the judgment was for \$50 or upwards, except where the same were allowed by the Circuit Court.

**183 DANVILLE STOVE & MNFG. CO. vs. CIRCUIT JUDGE (Kent),
No. 12052.**

To compel respondent to vacate an order allowing an appeal from Justice Court.

Granted June 18, 1891, with costs.

Relator, a resident of the State of Pennsylvania, recovered judgment October 29, 1890, against Annie Telelaar. In May, 1891, defendant moved the Circuit Court for leave to appeal. Notice of the motion was served upon relator in Pennsylvania, and endorsed thereupon was the following: "I, hereby accept service of a copy of the within affidavit, order to show cause and notice of hearing for and in behalf of said company."

Relator insisted that the application or affidavit was not filed until the day of hearing, although it was presented to the circuit judge when the order to show cause was issued, citing *Bank vs. Judge*, 43 M., 296 (857); that the application for leave to appeal was in the nature of an original proceeding, and that the notice or order to show cause must be treated, as to service, like process, citing *McCaslin vs. Camp*, 26 M., 390; that the acceptance of service simply dispensed with proof of service, but did not confer jurisdiction. Citing, *U. S. vs. Loughy*, 43 Fed. Rep., 449; *Washington vs. Barnes*, 41 Ga., 314; *Penron vs. McKenzie*, 18 N. E. (Ind.), 389.

**184 DANVILLE STOVE & MNFG. CO. vs. CIRCUIT JUDGE (Kent),
No. 12324, 88 M., 244.**

To compel respondent to vacate an order allowing an appeal.
Granted November 11, 1891, with costs.

After the granting of the writ in the preceding case, a second

application was made to the circuit judge to grant leave to appeal, and the court made an order to show cause and ordered service upon the attorney who appeared for relator in Justice Court, relying upon Act No. 73, Public Acts 1891. Relator's contention was, that said act did not take effect until October, 1891, and has no application to a judgment rendered nearly a year before that time.

185 TULLY vs. CIRCUIT JUDGE (Lenawee), No. 14837.

To vacate an order allowing an appeal from a judgment rendered by a justice of the peace, the order of allowance being based upon the affidavit of appellant, setting forth the employment of attorneys to appear in said matter, affiant's absence from the place of trial for some months, the failure of the attorneys so employed to appear, and affiant's ignorance of the fact and of the judgment against him.

Denied May 1, 1895, with costs.

The court imposed as a condition of the allowance of the appeal, the payment of a motion fee of five dollars, which amount was paid to and accepted by relators' attorney.

As to the waiver respondent cited, *Peninsular St. Co. vs. Osman*, 73 M., 570; *Higley vs. Lant*, 3 M., 612; *Wineman vs. Circuit Judge*, 35 M., 497 (687); *Cameron vs. Adams*, 31 M., 71; *Hamilton vs. Circuit Judge*, 52 M., 409 (172); *Climie vs. Odell*, 20 M., 12.

Respondent further insisted that the mistake or neglect of attorneys brings the case within the statute, *Capwell vs. Baxter*, 58 M., 571; *Merriman vs. Circuit Judge*, 96 M., 603 (145).

186 LAWRENCE vs. CIRCUIT JUDGE (Wayne), No. 14229½.

To vacate order granting leave to appeal from a justice's judgment, after five days had elapsed, where appellant had employed an attorney who had informed him that upon the return day the case would be adjourned and he notified, but on the return day said attorney's mother was buried, and said attorney was taken

seriously ill, and the defendant only learned of the judgment on the 8th day after judgment, when an execution was presented.

Order to show cause denied June 2, 1894.

187 HEFFERNAN vs. CIRCUIT JUDGE (Livingston), No. 15917.

To vacate an order allowing an appeal from a judgment for defendant rendered by a justice.

Granted December 4, 1896, with costs.

Plaintiff, residing in California, through his attorney sued upon a promissory note. Upon the trial defendant was allowed to add a notice to his plea that he would show a novation and gave testimony supporting such claim. Plaintiff had no notice or knowledge that such a defense would be set up and after judgment plaintiff's attorney wrote notifying plaintiff of the defense and the result and asked for instructions.

188 MUIRHEAD vs. CIRCUIT JUDGE (Wayne), No. 14121.

To vacate an order granting to a garnishee defendant leave to appeal from a judgment rendered by a justice, after the lapse of five days.

Granted April 13, 1894, with costs.

Appellant had answered orally that the principal defendant was a householder, married and having a family, and the amount which he admitted to be due was within the \$25, which was exempt. The justice at that time, and when appellant appeared in answer to the second summons, informed appellant that he could not be held and that he need not pay further attention to the matter. Appellant was informed of the judgment and made inquiry of the justice, who replied that he had erred and that he would set aside the judgment.

189 LEONARD ET AL. vs. CIRCUIT JUDGE (Kent), No. 14965.

To compel the allowance of an appeal from a judgment rendered by a justice of the peace after the lapse of the five days.

Granted June 25, 1895, with costs against appellee.

Judgment rendered May 24, at Byron Center. Relators reside at Grand Rapids. On May 28, forwarded to Byron Center per U. S. Express Co., affidavit and bond in appeal, with costs and fees, addressed to the justice.

The package reached Byron Center at 4 o'clock p. m. of the same day, but the justice did not receive it until May 31. Relators forwarded \$2 as clerk and entry fee, under How. Stat., Sec. 7003, but the justice insisted that Act. No. 402, Local Act 1895, made the fee \$4.

Relators, however, insisted that said act related only to cases commenced in the Circuit Court.

190 FRANK vs. CIRCUIT JUDGE (Kent), No. 13841½.

To compel respondent to allow an appeal from a justice's judgment, after the lapse of five days, on the ground that relator had been unable to obtain sureties on the appeal bond within that time.

Order to show cause denied December 4, 1893.

191 BREDE vs. CIRCUIT JUDGE (Gogebic), No. 12805½.

To set aside an order allowing an appeal from a justice of the peace.

Order to show cause denied May 13, 1892.

Judgment was rendered by the justice against relator within the hour named in the summons, and relator was informed that the judgment was absolutely void, and that no proceedings could be predicated upon it. Relying upon this advice he paid no attention to the case until he was taken on a body execution.

192 LE CLEAR vs. CIRCUIT JUDGE (Jackson), No. 12072½.

To compel allowance of an appeal from Justice Court.

Order to show cause denied July 1, 1891.

It appeared that relator attempted an appeal but that the sureties upon the bond refused to justify, and that the justice declined to approve the bond or to receive it.

193 ROTHMAN vs. CIRCUIT JUDGE (Macomb), No. 11724.

To compel the circuit judge to dismiss an appeal from Justice Court.

Granted February 10, 1891, with costs.

Relator recovered judgment against one Child, on August 11, 1890. On August 18, 1890, Child presented to the justice an affidavit and bond on appeal. The justice made return to the Circuit Court. On October 13, 1890, relator's attorneys entered a general appearance and on the same day entered a motion to dismiss the appeal because not taken within the statutory time. The court denied the motion, holding that the entry of appearance operated as a waiver.

Relator contended (1) that the failure to file the affidavit and bond on appeal within the time, was jurisdictional and could not be waived, citing *Smart vs. Howe*, 3 M., 590; *Moore vs. Ellis*, 18 M., 77; *Canal Co. vs. Haas*, 20 M., 326; *Dale vs. Lavigne*, 31 M., 148; *Franks vs. Smith*, 45 M., 326. (2) That the appearance and motion should be construed together, citing *Wiley vs. Circuit Judge*, 29 M., 486 (No. 203); *Michaels vs. Stork*, 44 M., 2; *Franks vs. Smith*, 45 M., 326; *U. S. vs. Yates*, 6 How. (U. S.), 605; *Dow vs. Gibbony*, 3 Hughes, 382; *Reinstadler vs. Reeves*, 33 Fed. Rep., 308; *Cruger vs. R. R. Co.*, 2 Kern. (N. Y.), 190. As to whether mandamus is the proper remedy in such case, relator cited, *Conrad vs. Freeland*, 18 M., 255; *Wiley vs. Circuit Judge*, 29 M., 486 (No. 203); *Detroit & B. P. R. Co. vs. Circuit Judge*, 27 M., 303 (171); *Comstock vs. Circuit Judge*, 30 M., 98 (170); *Miller vs. Circuit Judge*, 41 M., 326 (116); *Stevenson vs. Circuit Judge*, 44 M., 162 (202); *Franks vs. Smith*, 45 M., 326; *Ellair vs. Circuit Judge*, 46 M., 496 (No. 146); *Hamilton vs. Circuit Judge*, 52 M., 409 (172); *Daniels vs. Circuit Judge*, 60 M., 219 (152); *King vs. Circuit Judge*, 69 M., 84 (138); *Brady vs. R. R. Co.*, 73 M., 457.

194 BLAIS vs. CIRCUIT JUDGE (Alpena), No. 12349.

To compel dismissal of appeal from Justice Court.

Granted November 18, 1891, with costs.

Judgment was rendered June 14, and it is claimed that the affidavit was not made and the bond was not filed until July 23. The justice returned that the affidavit was made and filed June 19, although the jurat was dated July 23, but claimed that the date had been changed; that the bond was delivered to him on June 19, although the surety did not justify until July 23, and the fees were not paid until the latter date.

Motion made December 22, 1891, to recall the writ.

Denied January 5, 1892.

195 COMBS vs. CIRCUIT JUDGE (Saginaw), No. 13939, 99 M., 234.

To compel respondent to vacate an order allowing an appeal from Justice Court, in a case where the affidavit and bond were left at the office of the justice, in the files of the case, during the absence of the justice from the city.

Granted March 6, 1894, with costs.

Held, that appellant could have proceeded under Sec. 7006, How. Stat., and therefore the appellant failed to bring himself within the terms of How. Stat., Sec. 7005.

196 CRONIN vs. CIRCUIT JUDGE (Calhoun), No. 13321.

To vacate an order setting aside a former order dismissing an appeal.

Granted March 9, 1893, with costs.

The respondent returned that no notice of the motion to dismiss had been given to appellant or his attorney; that the motion was based upon imperfections in the bond, and upon the hearing, appellant appeared and tendered a new bond.

197 SHERWOOD ET AL. vs. CIRCUIT JUDGE (Ionia), No. 14838, 105 M., 540.

To compel the vacation of an order entered in a chancery cause.

Denied May 28, 1895, with costs.

198 SHERWOOD ET AL. vs. CIRCUIT COURT (Ionia), No. 15171.

To dismiss an appeal from a judgment rendered by a justice of the peace, on the ground that the justification to the appeal bond was not taken before the proper authority, in a case where relator had appeared generally before the motion to dismiss was made.

Denied November 19, 1895, with costs.

199 PULTE vs. CIRCUIT JUDGE (Wayne), 47 M., 646.

When an appeal bond on appeal to this court is defective or insufficient and the circuit judge has approved it, the remedy is by motion in the Supreme Court, and not by mandamus against the circuit judge. October 12, 1882.

200 HADD vs. CIRCUIT JUDGE (Bay), No. 13841.

To enter an order requiring a justice of the peace to make a return in case of an appeal from a judgment rendered by him, in a case where it was claimed that the appeal bond was defective, in that the justification of the sureties had not been indorsed thereon.

Denied November 23, 1893, with costs.

201 BOEHLKE vs. CIRCUIT JUDGE (Kent), No. 14624½.

To compel respondent to dismiss an appeal from a judgment rendered by a justice of the peace.

Order to show cause denied January 8, 1895.

The surety on the appeal bond did not justify in writing and under oath, before the justice, and the justification was not endorsed on said bond by the justice. A motion to dismiss was denied, but a new bond was ordered, and the clerk approved such bond. The motion to dismiss was renewed, whereupon the court approved the bond nunc pro tunc and denied the motion.

202 STEVENSON vs. CIRCUIT JUDGE (Kent), 44 M., 162.

To vacate an order refusing to compel a justice to make return to an appeal taken by relator, in a case where the justice declined to make the return, on the ground that the sum paid did not include the fee for making return, but it appeared that the justice had receipted for "ten dollars as fees and costs on appeal of case," etc.

Granted June 23, 1880.

Held, that although the justice may have a claim against the appellant for the amount unpaid, it was his duty to make due return to the appeal; that the party had a right to rely upon the receipt given, and he should not be deprived of his right to an appeal because of a misunderstanding with the justice.

203 WILEY vs. CIRCUIT JUDGE (Allegan), 29 M., 486.

To compel the vacation of an order directing a return upon claim of appeal from a judgment rendered by a justice, where the fees of the justice had not been paid or waived.

Granted July 14, 1874.

Where in such a proceeding the circuit judge has determined that the justice had waived the payment of the fee for making the return, his decision is conclusive, and cannot be reversed on mandamus provided there be any facts stated by the justice having any tendency whatever to establish it; but in this case where no fact is stated having any such tendency, the order of the circuit compelling a return is vacated by mandamus.

The appellee, in whose favor judgment has been rendered by the justice, having a right to have the pretended appeal dismissed for non-performance of anything made by the statute a condition precedent to the perfection of an appeal, has sufficient interest in the question of payment of the justice's fee for making a return, especially where execution has issued upon his judgment and been satisfied, to entitle him to a review by mandamus of the decision of the circuit judge.

Mandamus is the proper remedy and the only adequate legal remedy for the review of the action of the circuit judge in such proceedings. A writ of error would not reach the wrong complained of, because the record would not include these collateral proceedings; certiorari, if it would lie at all, could only be brought after the trial and judgment, and it is at least doubtful whether it would bring up such proceedings.

Where an inferior court has acted judicially in the determination of a question of fact, or a question of law properly involved in the case, in such shape as to give the power judicially thus to determine it, however erroneous the decision, it cannot be reviewed by mandamus; but where the case before such court does not, upon its facts or the evidence, legitimately raise the question of law or fact it has assumed to decide, so that the court could act judicially upon it, or had the power judicially to make the decision it has assumed to make, its action is not properly judicial, and no assumed determination of it, nor any order resting upon it, will preclude the remedy by mandamus, provided the case be in other respects a proper one for that species of remedy.

204 FARLEY ET AL. vs. CIRCUIT JUDGE (Sanilac), No. 13192.

To compel respondent to vacate an order requiring a return to an appeal.

Denied January 4, 1893, with costs.

The appeal had been seasonably made, but the justice refused

to recognize the right of appeal, claiming that by agreement between plaintiff, the principal defendant, the garnishee defendant and the claimants of the money and property in the hands of the garnishee defendant, his determination was to be a final one. The application to the Circuit Court was to compel a return and on that application the matters of fact were fully gone into and determined in favor of appellant.

205 SWARTHOUT vs. CIRCUIT JUDGE (Saginaw), No. 13992, 99 M., 347.

To compel respondent to vacate an order made by his predecessor directing an amended return on appeal from Justice Court, and an order made by respondent dismissing the appeal, unless appellants shall make payment of the jury fee left unpaid.

Denied March 20, 1894, with costs.

Held, (1) no application had been made to the respondent to vacate the first named order, and in such case, affirmative action would not be directed, and (2) that the costs which appellant is required to pay included jury fees, and that How. Stat., Sec. 7019, relates to the fees of the justice, and not to the costs recovered by the other party to the suit.

206 PRESTON vs. CIRCUIT JUDGE (Wayne), 54 M., 242.

To compel dismissal of an appeal from Justice Court in a case where the fee of three dollars to be paid to the clerk of the appellate court by the justice on making his return, as prescribed by Act No. 148, of the Laws of 1883, was not paid to the justice but was paid by the appellant to the clerk upon the final return of the justice.

Denied June 24, 1894, on the ground that the court below had discretion to do what was done.

207 COLLAR vs. CIRCUIT JUDGE (Ingham), No. 15652½.

To vacate an order dismissing appeal from a judgment rendered by a justice of the peace, where the costs and entry fee were not paid within the five days.

Order to show cause denied June 10, 1896.

208 LOWRY vs. CIRCUIT JUDGE (Lenawee), No. 14446.

To vacate an order dismissing an appeal taken by plaintiff (relator), from a judgment rendered by a justice of the peace in favor of plaintiff for \$308 damages and \$2.60 costs.

Granted October 30, 1894, with costs against plaintiff and appellee.

Immediately upon the rendition of the judgment defendant paid the amount of both damages and costs to the justice and it was insisted for respondent that appellant had not paid the costs. Relator insisted that under How. Stat. Sec. 7019, the appeal should not have been dismissed because appellant and the justice were the only persons interested, by virtue of the judgment appealed from, in the question of costs.

See Swarthout vs. Circuit Judge, 99 M., 347. No. 205.

209 SCRANTON LUMBER COMPANY vs. CIRCUIT JUDGE (Wayne), No. 16016; 3 D. L. N., 799; 70 N. W., 145.

To vacate an order granting an appeal from a justice.

Granted February 18, 1897, with costs against defendant.

Held, that "under subdivision 3 of Sec. 10 of Act 460, Local Acts of 1895, providing for appeals from Justice Courts, parties making application for an appeal must give notice to the opposite party by serving upon him, his attorney or agent, the petition and grounds of the motion and the affidavit upon which the same is based; such opposite party shall have an opportunity to be heard before the Circuit Court before such appeal is allowed.

"The length of time to be contained in the notice is governed by the Circuit Court rules pertaining to special motions."

210 JESCHLY ET AL. vs. POLICE JUSTICE (Detroit), 7 M., 455.

Case made from Wayne Circuit.

To compel respondent to allow an appeal from the final judgment of the Police Court to the Circuit Court for the County of Wayne, in a case for assault and battery, in which relator stood convicted in said court.

The circuit judge refused the writ and the Supreme Court being equally divided, the judgment below was affirmed, December 6, 1859.

211 SULLIVAN vs. HAUG (Police Justice), 82 M., 548; 10 L. R. A., 263.

To compel respondent to make return to an appeal attempted to be taken in a case determined in the Police Court of Detroit.

Denied October 17, 1890.

Held, that Sec. 23, of Act No. 161, Laws of 1885, as amended by Act. No. 287, Laws of 1887, limiting the right of appeal to cases where the sentence of imprisonment exceeds twenty days, or the fine imposed exceeds \$25 is not unconstitutional.

212 SHERWOOD ET AL. vs. CIRCUIT JUDGE (Allegan), 80 M., 270.

To vacate an order requiring a justice of the peace to make a return to a writ of certiorari.

Granted April 18, 1890.

Held that an affidavit which has been indorsed with an allowance of a writ of certiorari and filed in the clerk's office and the writ issued, cannot be used as the basis for the allowance of a second writ; that a justice of the peace is justified in refusing to make return to a writ of certiorari, if the bond is not served upon him within the statutory ten days; that the statutory writ is special, and the proceedings to obtain a review by this process must be strictly complied with, and that a party has no right to take from the clerk's office an affidavit upon which a writ has been issued, to present it for a second order of allowance.

213 LASHBROOK vs. CIRCUIT JUDGE (St. Clair), No. 14026.

To compel vacation of order quashing a writ of certiorari directed to a justice of the peace.

Granted April 27, 1894, with costs.

The writ was quashed on the ground that it was served outside of the County of St. Clair. Relator contended (1) that defendant in certiorari, after return made by the justice, had appeared generally and made a motion in said cause to require plaintiff in certiorari to file a good and sufficient bond; (2) that the return to the writ showed service within the county, and that the return of the justice as to the place of service was not properly a part of his return (the circuit judge had, however, allowed affidavits to be filed showing where service was actually made), and (3) that the service was of a mandate to the court like an order of court, a notice of trial or a chancery subpoena.

It appeared that the justice lived at the Village of Memphis, which is located on the county line.

213½ DUFLO vs. CIRCUIT JUDGE (Wayne), No. 16279, 4 D. L. N., 568.

To vacate an order dismissing certiorari directed to drain commissioners of Wayne and Macomb Counties.

Denied September 14, 1897, on the ground that the notice was not served seasonably on the commissioner for Macomb, nor was he a party named in the writ.

214 MARCY vs. CIRCUIT JUDGE (Ionia), No. 15619½.

To set aside an order dismissing a writ of certiorari, directed to a justice of the peace to review summary proceedings to recover possession of certain lands, where the writ was properly allowed and issued but the bond was not filed until some days thereafter.

Order to show cause denied May 19, 1896.

The circuit judge based his decision upon Sec. 8311 How. Stat. Relator insists that Sections 7033, 7034 and 7038 govern, also that he should have been allowed to file a new bond, *Snyder vs. Judge*, 80 M. 511 (149); *Durand vs. Circuit Judge*, 76 M. 624 (132).

**215 GOEBEL BREWING CO. vs. CIRCUIT JUDGE (Wayne),
No. 14255.**

To dismiss a writ of certiorari directed to a justice of the peace, where the notice of the intention to remove the cause was not given within the five days provided for in How. Stat. Sec. 7032.

Granted June 28, 1894, with costs against the garnishee defendant.

Judgment before the justice was rendered September 1, 1893, and the return of the justice to the writ set forth that the notice was served on September 9. The circuit judge returned that according to the affidavit filed at the hearing before him, the notice was served on the justice September 6, and the bond was presented and approved by the justice on the same day, and that the bond contained a sufficient notice of the intention to remove the case.

216 TURNER vs. CIRCUIT JUDGE (Grand Traverse), No. 14742½.

To vacate an order quashing a writ of certiorari.

Order to show cause denied on first application because no brief was filed with the application. Brief filed February 15, 1895, and order to show cause denied February 26, 1895, on the ground that a writ of error is the more appropriate remedy in such cases.

217 GIBSON (Comr. of Highways) ET AL. vs. CIRCUIT JUDGE (Lenawee), No. 13557½, 97 M., 620.

To quash a writ of certiorari directed to the highway commissioner and clerk of a township, commanding them to certify the proceedings had in laying out a private road.

Order to show cause denied June 13, 1893.

The motion to dismiss the writ alleged (1) that said proceeding is out of the course of common law, and is not to carry into effect any order, judgment or decree of said court, or to give said court such supervisory control over an inferior court, or tribunal as is contemplated by the constitution; (2) that said proceeding was taken by certiorari to the Supreme Court, and the writ was dismissed by that court; (3) that said writ was not taken out within the time limited by the statute; (4) that there had been no proper service of said writ, as no bond was served on respondents, or any notice that the statutory bond had been filed in said cause; (5) that no statutory appeal was taken by any party to the record to the township board, and no reason is given in the petition for not taking such appeal, and (6) that the petitioner for the writ is not a party to the record, and is not admitted by the record to be a land owner.

218 EWER vs. CIRCUIT JUDGE (Calhoun), No. 14487½.

To compel respondent to quash a writ of certiorari directed to a drain commissioner, and vacate an order allowing a new bond to be filed, in a case where the notice of the intended removal was signed in the name of the plaintiff in certiorari "by John C. Patterson, his attorney," and the original bond ran to the drain commissioner instead of to the opposite party.

Order to show cause denied October 30, 1894.

219 LOREE vs. CIRCUIT JUDGE (Lenawee), No. 13388½.

To vacate an order dismissing and quashing a writ of certiorari directed to a drain commissioner, and a township clerk to review drain proceedings.

Order to show cause denied March 8, 1893, because no brief statement of facts accompanied the application.

April 14, 1893. Re-submitted. Order to show cause denied as relator's remedy is by appeal.

220 SNYDER ET AL. vs. CIRCUIT JUDGE (Lapeer), No. 13119.

To dismiss a writ of certiorari directed to a county drain commissioner, on the ground of want of jurisdiction.

Denied November, 1892, with costs. Ruled by Merrick vs. Township Board, 41 M. 630. See No. 164, 1479.

221 PAULUS vs. CIRCUIT JUDGE (Leelanau), No. 15840.

To vacate an order dismissing an attachment against a sheriff and allowing him to amend his return to a capias, and to compel respondent to proceed to determine the amount due under How. Stat. Secs. 7326 to 7329, where the writ had been quashed, and defendant discharged in February, 1893, and on error to the Supreme Court the order of the circuit judge was reversed in February, 1895 (104 M., 42), and where the return set forth that the defendant had been taken and let to bail, and the sheriff insisted that no bail in fact had been taken.

Denied October 27, 1896, with costs.

Respondent cited Barber vs. Smith, 41 M., 138; Kidd vs. Doherty, 59 M., 243.

222 SWIFT (Recorders' Court Judge) vs. CIRCUIT JUDGE (Wayne), 64 M., 479.

To prevent the circuit judge for the County of Wayne from reviewing, by certiorari, a conviction in the Recorder's Court of the City of Detroit, for the violation of a city ordinance.

Denied January 20, 1887.

Held, that the Recorder's Court of the City of Detroit is an inferior court, within the constitutional provision.

223 LAUDER vs. CIRCUIT JUDGE (Wayne), and RECORDERS' COURT JUDGE (Detroit), 79 M., 602.

To compel the circuit judge to recall and the Recorder's Court judge to certify back, an indictment, found by the grand jury, which had been certified to the Recorder's Court, where upon arraignment relator desired to put in a plea in abatement, which it was held could not be disposed of in the Recorder's Court, and the Circuit Court refused to order the return of the record to that court, and the Recorder's Court declined to certify it back.

Granted February 20, 1890.

Held, that the only purpose of sending an indictment to the Recorder's Court is for trial, and that the better practice would be to have the parties arraigned and issue joined on the merits before the record is certified down, but where this is not done the record cannot be regarded as beyond recall when justice requires it.

224 LUTON (Pros. Attorney) vs. CIRCUIT JUDGE (Newaygo), 70 M., 152.

To vacate an order quashing a civil warrant and dismissing all proceedings thereon, and to reinstate the case for trial, the defendant having appealed from the justice's judgment, in a case where the affidavit did not state positively the facts authorizing

the issuance of the warrant, and failed to give the circumstances upon which affiant based his reason to believe that they existed.

Denied May 8, 1888.

225 ANDRES vs. CIRCUIT JUDGE (Ottawa), 77 M., 85; 6 L. R. A., 238.

To compel respondent to allow an information in the nature of a quo warranto to be filed in the Circuit Court for Ottawa County, where the claim made was that the declared result of the election was invalid, because certain declarations of intention had been made before the clerk, but not in his office.

Denied October 25, 1889.

Held, that declarations of intention are not required to be made before the clerk of the court in his office, or in open court.

226 PEOPLE vs. THOMPSON, 66 N. W., 478; 2 D. L. N., 966.

Mandamus or certiorari will not usually be granted to review the action of trial courts in refusing to quash an indictment returned by a grand jury. See No. 252.

227 CHAMBERLAIN (Pros. Atty.) vs. O'HARA (Justice of the Peace), No. 13520½.

To compel respondent to issue a warrant for a violation of the provisions of Act No. 76, Laws of 1891.

Presented on petition and answer June 6, 1893, and denied on the ground that the application should have been made to the Circuit Court.

227½ HURST (Pros. Atty.) vs. WARNER (J. of P.), No. 13974, 102 M., 238. (Certiorari to Chippewa.)

To compel respondent to issue a warrant for the violation of a rule adopted by the State Board of Health under Act No. 47,

Laws of 1893, relative to the disinfection of baggage coming from infected localities.

Denied September 27, 1894.

Held, that the rule was not warranted by the statute.

228 FISH (Pros. Attorney) vs. STOCKDALE (Justice of the Peace),
No. 15520; 3 D. L. N., 577; 69 N. W., 92. (Certiorari to Allegan.)

To compel a justice of the peace to issue a warrant upon a complaint made under Act No. 186, Laws of 1893, relative to taking and catching fish in inland waters, the circuit judge having determined that the Act was unconstitutional because of defective title.

Affirmed and writ denied December 4, 1896.

229 ROBISON (Pros Attorney) vs. RECORDERS' COURT JUDGE
(Detroit), 69 M., 607.

To compel respondent to take jurisdiction of and try cases for the violation of Act No. 129, Laws of 1887, prohibiting the carrying of concealed weapons.

Denied April 25, 1888.

Held, that the police justices in the City of Detroit have full jurisdiction in cases arising under the Act and that the Recorder's Court has no jurisdiction.

230 CROSBY vs. POLICE JUSTICE (Detroit), 40 M., 631.

To compel respondent to entertain a complaint for embezzlement of county funds, made by relator as treasurer of Wayne County against a ward collector.

Granted April 23, 1879.

231 WOLCOTT (Pros. Attorney) vs. HOLCOMB (Justice of the Peace),
No. 13565; 97 M., 361; 23 L. R. A., 215.

To compel respondent to issue a warrant for the alleged violation of the election law, in refusing to receive the vote of an inmate of the Soldiers' Home.

Granted November 10, 1893, without costs.

232 ATTORNEY GENERAL vs. POLICE JUSTICE (Detroit), 41
M., 224.

To compel respondent to entertain a complaint for a fraudulent disposition of real estate.

Denied June 18, 1879.

Held, that Compiled Laws, Sec. 7191, applies only to a disposal of such property as is capable of removal and concealment, and that the Attorney General is not a proper relator in proceedings before the justice, where the crime charged is an offense against individual interests, and not concerning the State or the general security.

233 WEAVER vs. CIRCUIT JUDGE (Clare), No. 11722½.

To quash an information on the ground that there was no legitimate evidence introduced; upon the examination before the justice, tending to show the commission of the offense charged.

Order to show cause denied January 13, 1891.

234 GAFFNEY (Pros. Attorney) vs. CIRCUIT JUDGE (Missaukee),
No. 11912½, 85 M., 138.

To compel respondent to vacate an order quashing an information and proceed to the trial of one who had previously been complained against for the same offense and discharged upon examination had before the justice.

Granted April 15, 1891.

235 PELISSIER vs. RECORDERS' COURT JUDGE (Detroit),
No. 16373½.

To vacate an order overruling a motion to quash an information charging relator with larceny.

Order to show cause denied June 15, 1897..

Relator leased premises, including certain furniture therein, from one Lawson. One Brabyn boarded with relator and occupied one of the rooms in said premises. Relator was afterwards arrested in Canada upon complaint made by Brabyn, having in his possession property owned by said Brabyn, as well as goods and chattels owned by Lawson, brought to Detroit, tried and convicted. Afterwards he was informed against for larceny of the property owned by Lawson, and moved to quash the information upon the following grounds:

(1) Because the said defendant has been once arrested, tried, convicted and sentenced, for the same offense upon which he is now arrested, which case is the case of the People of the State of Michigan vs. Gaston Pelissier and Anna Pelissier, tried in this court on the 16th and 17th days of February, 1897, file No. 9998.

(2) Because the said defendant was arrested in the Dominion of Canada and brought into this state, under and by virtue of the Extradition Treaty, existing between the United States and Great Britain, upon a charge of larceny upon which he was tried in the Records' Court of the City of Detroit, upon the 16th and 17th days of February, 1897, and since being brought here upon that charge he has not been given an opportunity to return to the said Dominion of Canada, as is provided by the said treaty.

(3) Because the warrant in said case is void and was so at the time of the arrest of the said defendant, in that it was attested by John B. Whelan, as senior Police Justice, when Albert F. Sellers was in fact such senior Police Justice.

(4) Because since the said defendant was arrested and arraigned in this court, the warrant in said case has been altered and changed by order and permission of this court, granted on the day of, 1897, directing said warrant, together with the other files in the case to be returned to the Police Court for correction, whereupon the name of John B. Whelan was erased and the name of Albert F. Sellers written in over it, thereby making the warrant void and invalid if it was not already so.

236 ROBISON (Pros. Attorney) vs. RECORDERS' COURT JUDGE
(Detroit), 59 M., 529.

To compel respondent to proceed to the trial of certain indictments for bribery, found in the Circuit Court for the County of Wayne, and quashed for want of jurisdiction.

Granted February 3, 1886.

Held, that while the Attorney General should represent the people in the Supreme Court, there is no rule of law preventing that court from considering an application by the prosecuting attorney of a county, to set a court in motion to proceed in a case under his control therein; that a decision quashing an indictment is reviewable, and mandamus is the more appropriate writ.

237 WARE (Pros. Attorney) vs. CIRCUIT JUDGE (Branch), 75
M., 488.

To compel respondent to assume jurisdiction over and try an information for alleged breach of the peace, charged to have been committed by the use of false, abusive and insolent language, in a dwelling house in the presence of the occupants, but accompanied with no threat and causing no expectation or fear of personal violence.

Denied June 28, 1889.

Held, not to be a breach of the peace within the common law definition of that term.

238 ROBISON (Pros. Attorney) vs. RECORDERS' COURT JUDGE
(Detroit), 69 M., 608.

To compel respondent to try a case arising under How. Stat. Sec. 2203, for the protection of game.

Denied April 25, 1888.

Held, that the party violating the provisions of the Act is deemed guilty of a misdemeanor, the only punishment for which is a penalty of \$50 and imprisonment until such penalty is paid,

not exceeding 30 days, of which case the Police Court of the city has jurisdiction to the exclusion of the Recorder's Court.

239 ROBISON (Prosecuting Attorney) vs. MINER (Police Justice, Detroit), and

240 ROBISON (Prosecuting Attorney) vs. HAUG (Police Justice, Detroit), 68 M., 549.

To require respondents to entertain jurisdiction to hold preliminary examinations in criminal prosecutions, under the liquor law of 1887, it being claimed that the statute contains unconstitutional provisions and is therefore invalid.

Granted in the first named case, March 2, 1888, but denied in the last named, because the application to Judge Haug set out no offense in proper terms.

241 NICHOLS vs. NESBITT (Justice of the Peace), No. 12493½.

To compel respondent to proceed upon a complaint made under a city ordinance, relative to auctioneers.

Order to show cause denied February 16, 1892.

The ordinance was attacked on the ground that it discriminated between resident and non-resident auctioneers.

242 ELLIS (Pros. Attorney) vs. HUTCHINSON (Justice of the Peace), 70 M., 154.

To compel respondent to proceed with the examination of one charged with embezzling chattel mortgage property.

Denied May 10, 1888, on the ground that the provisions of Act No. 157, Laws of 1887, in so far as they relate to chattel mortgage property are not covered by the title of the Act and are therefore unconstitutional.

243 ROBISON (Pros. Atty.) vs. HAUG (Police Justice, Detroit), 71 M., 38.

To compel respondent to entertain a complaint for a violation of Sec. 31, of the Liquor Law of 1887, relative to the removal of curtains, screens, partitions, etc., it being claimed that said section is invalid.

Granted June 22, 1888.

243½ SADLER vs. SHEAHAN (Police Justice), No. 12905, 92 M., 630.

To compel respondent to receive a complaint and issue a warrant for the violation of the liquor law.

Denied July 28, 1892.

Respondent denied that he had refused to receive a complaint or that he had refused to allow relator to make and swear to such complaint.

As the application appeared to have been filed in the public interest no costs were awarded.

244 CHADDOCK (Pres., etc.) vs. DAY (Justice of the Peace), 75 M., 527; 4 L. R. A., 809.

To compel respondent to entertain a complaint and issue a warrant for the violation of a village ordinance.

Denied June 28, 1889, on the ground that a license fee of \$10 per month is excessive and unreasonable, and therefore void, and that an ordinance of a village requiring the payment of the license fee of \$10 per month for the privilege of selling fresh meat on the village streets, in less quantities than one-quarter of the slaughtered animal, is in restraint of trade and not within the legislative power of the village to enact.

245 AVERILL vs. PERROTT (Justice of the Peace), 74 M., 296.

To compel respondent to proceed with a preliminary examination.

Granted February 20, 1889.

Held, that justices of the peace of Bay City may exercise concurrent jurisdiction with the police justices in the apprehension and examination of persons charged with offenses not cognizable by justices of the peace, under the general statute, and that so much of Act No. 435, Local Acts of 1887, as attempts to deprive them of such power is unconstitutional. Citing *People vs. Pond*, 67 M., 97; *Perrot vs. Pierce*, 75 M., 578.

246 JOSLYN (Pros. Atty.) vs. CIRCUIT JUDGE (Bay), No. 13904.

To vacate an order quashing an information, filed against one Moss.

Denied January 26, 1894, without costs.

The information set forth that Moss had been a tenant on Ackerman's farm under a lease, which provided that Ackerman "was to have and own one-half of all the products raised on said farm during said year, to be delivered to said Ackerman by said Moss at Bay City"; that certain products raised on the farm belonged to Ackerman, were received and delivered to Moss, and that Moss "did then and there fraudulently and feloniously embezzle, secrete and convert to his own use, without the consent of said Ackerman * * * the said goods * * * and did then and there feloniously and unlawfully steal and carry away."

247 LUTON (Pros. Attorney) vs. CIRCUIT JUDGE (Newaygo), 69 M., 610.

To set aside an order quashing an information, charging a druggist with the sale of liquor to be used as a beverage, and to proceed to the trial of the accused.

Granted April 25, 1888.

The circuit judge quashed the information upon the ground that by *Robison vs. Miner*, 68 M., 549, Sec. 3 of the Act under which the information must be considered as based, had been declared unconstitutional.

248 HART (Pros. Attorney) vs. CIRCUIT JUDGE (Allegan), No. 12474.

To compel the vacation of an order quashing a complaint and warrant.

Granted January 20, 1892.

The complaint charged that one Cook "did feloniously and unlawfully kill and destroy certain deer, to wit, one deer, in violation of Act No. 40, of the Public Acts of the State of Michigan, Approved April 23, 1891."

The accused moved to quash for the following reasons: (1) Because if the facts stated are true, respondent has committed no offense punishable by the law of the State.

(2) The act under which complaint is made was repealed by Act No. 152, Laws of 1891.

(3) Said Act No. 40 is too indefinite and uncertain, both as to subject matter and time when in force, to be of any validity as a penal statute.

(4) Said Act No. 40 is directly opposed to the protection of game within this State.

Respondent contended that an Act applying to one or more counties merely, is a local Act, 13 Am. and Eng. Enc., 980; *State vs. Ellett*, 21 Am. Rep., 772; *Kerrigan vs. Force*, 68 N. Y., 381; that the two Acts are repugnant, *People vs. Forman*, 85 M., 110; *Dwarris on Statutes*, 5444; *People vs. Van Nort*, 64 Barb., 205; *State vs. Davis*, 70 Mo., 237; that where two statutes prescribe different penalties for the same offense, the later repeals the former without express words to that effect, *People vs. Russell*, 59 M., 104; *Robison vs. Records' Court Judge*, Id., 529 (236); *State vs. McCarthy*, 13 N. E. Rep., 409; *State vs. Cooper*, Id., 403; *Mongeon vs. People*, 55 N. Y., 613; *Flaherty vs. Thomas*, 12 Allen, 428; that penal laws must be uniform, *Robison vs. Records' Court Judge*, 59 M., 529 (236); that inasmuch as the general Act prescribes a different mode of punishment, it repeals the local

Act, *Musser vs. Com.*, 25 Pa., St. 126; *Blevens vs. People*, 1 Scam., 172; general words in a statute are to receive a general construction, *Ten Eyck vs. Wing*, 1 M., 40; *Terrance vs. McDougall*, 12 Ga., 826; *Jones vs. Jones*, 18 Me., 308; that the later statute covering the same subject repeals the former, though not repugnant, *Shannon vs. People*, 5 M., 71; *Feige vs. M. C. R. R. Co.*, 68 M., 1; *People vs. Hobson*, 48 M., 27; *People vs. Bissell*, 59 M., 104; that if the words "any deer" include tame deer, there is a right of property in the tame deer in confinement, 2 Blackstone's Com., 391.

249 AVERY (Pros. Atty.) vs. CIRCUIT JUDGE (St. Clair), No. 14035.

To vacate an order quashing an information.

Granted March 9, 1894.

Respondent returned that he quashed the information as to the assault with intent to commit the crime of murder, because the complaint and warrant did not state or point out with sufficient certainty the person intended to be murdered, and as to the count charging an assault with intent to do great bodily harm less than the crime of murder, the complaint and warrant charged nothing beyond assault and battery.

The complaint charged that "on etc., at etc., Ferguson Landon did assault one Henry Burns, with intent to commit the crime of murder by then and there shooting said Burns with a shotgun."

The language of the warrant followed that of the complaint.

250 ROHRER vs. CIRCUIT JUDGE (St. Joseph), No. 14456½.

To compel respondent to quash an information and discharge relator.

Order to show cause denied October 23, 1894.

Relator had been tried upon an information charging two offenses and was convicted of one and acquitted of the other.

On appeal, the judgment was reversed and a new trial granted, *People vs. Rohrer*, 100 M., 126. After the record was returned

relator moved for his discharge, claiming that he had been acquitted of one of the offenses charged, and had been once put in jeopardy as to the other.

251 SNYDER vs. CIRCUIT JUDGE (St. Clair), No. 14960½.

To quash an information filed under Act No. 99, of the Laws of 1889, entitled "An Act to provide for the punishment of crimes in certain cases," on the ground that the title does not express the object of the enactment.

Order to show cause denied June 21, 1895, on the ground that a writ of error is the more appropriate remedy.

252 SMITH vs. CIRCUIT JUDGE (Kalamazoo), No. 15496½.

To quash an information charging relator with perjury.

Order to show cause denied March 24, 1896.

Ruled by People vs. Thompson, 2. D. L. N., 966; 66 N. W., 478. No. 226.

253 LIBHART vs. CIRCUIT JUDGE (Calhoun), No. 11920½.

To compel respondent to quash an information.

Order to show cause denied May 5, 1891.

Relator was informed against under Section 13, of Act No. 313, Laws of 1887. His contention was, that said section in so far as it referred to an Indian, or person of Indian descent, is not covered by the title, and that the same is in violation of the Constitution of this State, and that of the United States.

254 WHITACRE vs. CIRCUIT JUDGE (Ingham), No. 12332½.

To compel respondent to quash an information, charging relator and another with forgery of a certain draft for \$2,000, or enter a nolle prosequi.

Order to show cause denied November 5, 1891.

The petition alleged that the testimony taken upon the preliminary examination had been taken in shorthand and had not been written out, read to or signed by the witnesses; that the testimony of one witness had not been returned to the Circuit Court; that on a former trial the jury disagreed, the evidence tending to show that the forgery was committed by another.

255 SCUREMAN vs. CIRCUIT JUDGE (Ionia), No. 12299½.

To compel respondent to quash an information.

Order to show cause denied November 11, 1891.

256 BARRON vs. CIRCUIT JUDGE (Bay), No. 14667½.

To quash an indictment returned by a grand jury against relator as drain commissioner, for willful neglect of duty under How. Stat., Sec. 9257.

Order to show cause denied January 31, 1895.

257 TURNER (Pros. Attorney) vs. CIRCUIT JUDGE (Muskegon), No. 13256, 95 M., 1.

To vacate an order quashing an information filed against a supervisor, charging willful neglect of duty, under Act No. 200, Laws of 1891.

Granted March 10, 1893, without costs.

258 CHANDLER ET AL. vs. CIRCUIT JUDGE (Benzie), No. 15917½.

To quash an information and discharge persons charged with perjury, on the ground (1) that there was no proof before the examining magistrate sufficient to authorize the issue of the war-

rant; (2) that the examination fails to make out a *prima facie* case or produce sufficient evidence to support the information, and (3) that the statute (3 How. Ann. Stat. 8234) so far as it relates to the offense charged is in conflict with Art. 4, Sec. 20, of the Constitution.

Order to show cause denied November 17, 1896.

259 WILSON vs. CIRCUIT JUDGE (Gratiot), No. 14697½, 104 M., 155.

To compel respondent to quash an information against relator for adultery, on complaint of the husband of the woman with whom the adultery was charged.

Order to show cause denied February 12, 1895.

260 BAILEY vs. CIRCUIT JUDGE (Calhoun), No. 13096½.

To quash a complaint and warrant for bastardy, on the ground that the court had no jurisdiction, for the reason that the child was born, and the mother of said child resided, in the County of Lenawee.

Held, that relator's remedy was by appeal.

Order to show cause denied October 5, 1892.

261 HARRIS vs. CIRCUIT JUDGE (Muskegon), No. 13998½.

To compel respondent to quash a complaint and warrant in a case where defendant was charged, before a justice, with being "a disorderly person within the meaning of Act No. 264, Laws of 1889, in that she was then and there a common prostitute," moved to quash, but was convicted and sentenced, and appealed to the Circuit, where the motion to quash was renewed, the defendant's contention being that the complaint should have charged the acts constituting the offense.

Or that defendant vacate an order denying defendant's motion

that the prosecuting attorney be required to furnish a note of the particular acts of prostitution upon which the people rely.

Order to show cause denied, on the ground that relator has an adequate remedy by appeal from the final judgment, January 30, 1894.

**262 ATTORNEY GENERAL vs. CIRCUIT JUDGE (Calhoun),
No. 12080.**

To compel respondent to vacate order quashing an information.
Granted July 1, 1891.

The information charged a violation of Act No. 187, Public Acts of 1887. Respondent held the Act unconstitutional, in that the title expressed more than one object.

Relator cited *Railway Co. vs. Dunlap*, 47 M., 457; *Cont. Imp. Co. vs. Phelps*, 47 M., 299; *Swartwout vs. Air Line*, 24 M., 391; *Conn. Fire Ins. Co. vs. St. Treasurer*, 31 M., 6 (1004); *People vs. Bradley*, 36 M., 447; *Kurtz vs. People*, 33 M., 279; *People vs. Mahaney*, 13 M., 481; *Hart. Fire Ins. Co. vs. Raymond*, 70 M., 485 (1075).

**263 CRANE (Pros. Attorney) vs. CIRCUIT JUDGE (Saginaw), No.
15992, 3 D. L. N., 750.**

To vacate an order quashing an information charging respondent therein with obtaining money by false pretenses, under How. Stat., Sec. 9161. Granted January 13, 1897.

**264 AVERY (Pros. Attorney) vs. CIRCUIT JUDGE (St. Clair),
No. 14067.**

To vacate order quashing an information charging that at, etc., on etc., one Malcolm "unlawfully did dispose of personal property, to wit, one suit of clothes of the value of twenty-five dollars, to one, John Jones, by way of lottery."

Granted April 11, 1894.

The motion to quash set forth (1) that said information set forth no crime known to the law; (2) that the evidence returned by said justice, which is conceded to be all that can be produced, does not show that the plan conducted by defendant constituted a lottery, and (3) that by consent of the prosecuting attorney, the questions raised were to be determined on said motion.

265 GLASSMIRE (Pros. Attorney) vs. CIRCUIT JUDGE (Manistee),
No. 11730, 84 M., 447.

To vacate an order quashing an information for criminal libel.
Denied February 5, 1891.

266 WOLCOTT (Pros Atty.) vs. SUPERIOR COURT JUDGE (Grand Rapids), No. 16014; 4 D. L. N., 17; 70 N. W., 831.

To vacate an order quashing an information, which charged that the respondent was engaged in the business of selling liquors without having made, executed and delivered to the treasurer the bond required by law.

Granted April 17, 1897.

The bond filed was signed by two sureties only, one of whom was a surety upon more than two other bonds.

Held, that the provision of the statute (How. Stat. Sec. 2283 d 1), which prohibits the acceptance of the same surety on more than two bonds is not unconstitutional, and that a party desiring to engage in the business must see to it, at his peril, that the bond when presented complies in all essential particulars with the law.

267 BOYNTON vs. CIRCUIT JUDGE (Calhoun), No. 11731.

To compel respondent to quash an information.

Granted January 22, 1891.

The information charged that John Boynton on the fourth

day of August, 1890, etc., "was then and there a disorderly person within the meaning of Sec. 1, of Act No. 264 of the Laws of 1889, for that said J. B. was then and there a drunkard and a tippler," and that said J. B. had been convicted of the offense as above charged, before, etc., on September 29, 1889, and July 30, 1890, "this is therefore charged as the third offense."

Relator insisted (1) that two offenses were joined in one count, viz.: that of being a drunkard and that of being a tippler; (2) that in alleging the offense it is not sufficient to merely set forth the language of the statute "drunkard and tippler;" that the acts which go to make up the offenses must be set forth with reasonable certainty; (3) that the third offense is only cognizable by the Circuit Court; that the first offense was committed under the laws of 1883, before the passage of the Act of 1887, or the Act of 1889; that a conviction under a law for an offense of which justices of the peace only had jurisdiction cannot be made the basis of the jurisdiction of the Circuit Court; (4) that the information fails to show that the offense was a public one or in view of the public, and (5) that in view of the continuous character of the offense a conviction as for a third offense cannot be predicated upon one had but four days prior in point of time.

Respondent cited, Cooley Const. Lim., 330; Rand vs. Com., 9 Gratt., 738; Ross's case, 2 Pick., 165; People vs. Butler, 3 Cow., 347; see People vs. Cox, 65 N. W., 283.

268 SMITH vs. CIRCUIT JUDGE (Muskegon), No. 13999½.

To quash an information charging defendant therein with a violation of the liquor laws, on the ground that it did not specify the kinds of liquors that defendant was charged with selling, the particular place where sold, the particular time when sold or the persons to whom sold or offered, or to compel respondent to vacate his order denying defendant's motion that the prosecuting attorney be required to furnish a bill of particulars.

Order to show cause denied, on the ground that defendant's remedy is by appeal from final judgment, January 30, 1894.

269 IVINSON vs. CIRCUIT JUDGE (Isabella), No. 11960½.

To compel respondent to quash an indictment.

Denied May 5, 1891.

Relator was indicted for selling liquor without first paying the tax. The sole basis of the application is that the indictment does not negative the exception in the statute. The indictment recites "he not being then and there a druggist who sells liquor for chemical, scientific, medicinal, mechanical or sacramental purposes only," but omits the clause "and in strict compliance with law."

270 TAYLOR vs. CIRCUIT JUDGE (Saginaw), No. 16073½.

To vacate an order setting aside an order dismissing the jury and discharging defendant, pending his trial for obtaining, in July, 1892, certain promissory notes, by means of false pretenses, under How. Stat., Sec. 9161.

Order to show cause denied February 17, 1897.

After the jury had been impaneled, a witness sworn and testimony given, objection to the introduction of further testimony was made, because the statute under which defendant was informed against was repealed by the Law of 1895, which changed the penalties and contained no saving clause.

The trial court sustained the objection, dismissed the jury and discharged the defendant.

Upon motion afterwards made, the court set aside the aforesaid order and set a day for the trial of the case.

271 WHEELER vs. CIRCUIT JUDGE (Hillsdale), No. 12558½.

To quash information and discharge relator from custody.

Order to show cause denied March 1, 1892.

Relator was complained against for keeping her saloon open on Sunday. The complaint contained the language, "not being a

drug store," and the warrant contained like words. The point raised was, that the complaint did not affirmatively state that the liquors were not such as were kept to be sold for chemical, scientific, medicinal, mechanical or sacramental purposes only, nor did it state that such liquors were not proprietary patent medicines.

272 WATSON vs. SUPERIOR COURT JUDGE (Detroit), 40 M., 729.

To vacate an order overruling a motion for the relator's discharge from arrest on civil process.

Granted April 25, 1879, on the ground that relator was privileged from arrest.

273 MAYNARD (Pros. Attorney) vs. CIRCUIT JUDGE (Eaton), No. 15244; 65 N. W., 760; 2 D. L. N., 824.

To vacate an order quashing an information filed for a violation of the local option law, Act No. 207, Laws 1889, in that the accused "kept a place" where intoxicating liquors were sold.

Denied January 16, 1896, without costs.

A trial had been had upon which the jury disagreed. It appeared that defendant was a druggist and a single sale, and the drinking of the same upon the premises, was all that was attempted to be shown. After the trial the motion to quash was made, the defense contending that proof of a single sale was insufficient to establish the charge of keeping a place, etc.

274 BISHOP (Pros. Attorney) vs. CIRCUIT JUDGE (Hillsdale), No. 13266½, 94 M., 461.

To compel respondent to set aside an order quashing an information filed against a druggist, under Act No. 313, Laws of 1887.

Denied January 11, 1893, without costs, on the ground that the prosecution should have been under Act No. 207, Laws of 1889.

275 PIERCE (Pros. Attorney) vs. CIRCUIT JUDGE (Bay), No. 12803.

To set aside order quashing information.

Granted June 8, 1892.

The information charged the selling of spirituous and intoxicating liquors without having paid the tax. The circuit judge returned that the order complained of was made in consequence of a misunderstanding on his part of the wording of the record returned by the police justice, and that on a review of the proceedings, he found that he had erred.

276 HOLDEN (City Attorney) vs. POLICE JUSTICE (Saginaw), No. 12027.

To compel respondent to entertain a complaint and issue a warrant for the violation of an ordinance relating to dray stands.

Granted June 2, 1891.

277 CITY OF SAGINAW vs. CIRCUIT JUDGE (Saginaw), No. 14877, 106 M., 32.

To vacate an order quashing a complaint, under an ordinance providing that any person not a resident, who shall bring into the state any goods to be sold by auction, without any intention of remaining permanently in the business, shall be deemed a transient trader and shall pay a license.

Denied July 2, 1895, with costs.

Ordinance held invalid as it applies only to non-residents.

278 PERROTT (Justice of the Peace) vs. PIERCE (Pros. Atty.), 75 M., 578.

To compel respondent to appear before relator and conduct a prosecution for an assault and battery, committed within the corporate limits of Bay City.

Denied June 28, 1889, on the ground that the Legislature had, by Sec. 161, of Act No. 435, Local Acts of 1887, vested in the Police Court of said City original and exclusive jurisdiction in the class of cases of which assault and battery is one, and that it was competent for the Legislature so to do.

279 BURRITT (Pros. Attorney) vs. CIRCUIT JUDGE (Clare), No. 11730½.

To compel respondent to vacate an order directing relator to file an information against a party who had been held for trial in the Circuit Court, upon a charge of taking and carrying away from inside the railing at an election booth, pending an election, a number of official ballots.

Order to show cause denied January 13, 1891.

280 STEELE vs. CIRCUIT JUDGE (Ionia), No. 12884½.

To quash a conviction and discharge the prisoner.

Order to show cause denied June 15, 1892.

Respondent had been convicted of simple larceny, and on appeal to the Circuit, moved to quash and for his discharge, on the ground that after the jury list had been struck and agreed upon, the justice had, in the absence of the prisoner, excused two of the jurors who had been agreed upon.

281 ATTORNEY GENERAL vs. CIRCUIT JUDGE (Jackson), No. 12482, 90 M., 272.

To vacate an order made in Habeas Corpus proceedings discharging a prisoner confined in a State prison, under a void sentence.

Denied February 10, 1892.

On granting the order to show cause the court entered an order staying proceedings until further order.

282 STEVENSON (Supervisor Fruitport Twp.) vs. CIRCUIT JUDGE (Muskegon), No. 12140, 90 M., 20.

To compel respondent to vacate order made in a Habeas Corpus proceeding, discharging from custody two persons held on a body execution issued by a justice upon judgment for trespass, in cutting trees in the highway.

Granted January 22, 1892, with costs.

283 PERKINS vs. CIRCUIT JUDGE (Wayne), No. 14882.

To compel respondent to vacate an order discharging from custody, upon Habeas Corpus, one McDonald, whose body had been taken on an execution.

Denied May 28, 1895, with costs.

Relator brought replevin against McDonald, but before the writ was executed McDonald filed a bill and obtained an injunction restraining relator from interfering with McDonald's possession of the chattels. Relator prosecuted his suit to judgment and finally obtained an execution against defendant's body.

284 TURNER (Pros. Atty.) vs. CIRCUIT JUDGE (Muskegon), No. 12337, 88 M., 359.

To vacate order discharging a certain person from custody after conviction of assault and battery, upon an information

charging him with an assault, with intent, etc., but not charging a battery.

Denied November 13, 1891.

285 FREY vs. CIRCUIT JUDGE (Calhoun), No. 15180; 64 N. W., 1047; 2 D. L. N., 604.

To compel the discharge of relator who was tried and convicted under How. Stat., Sec. 9093, because respondent, who was out on bail, voluntarily left the court room after the case was submitted to the jury and was not present when the jury brought in the verdict.

Denied November 19, 1895.

286 MOORMAN vs. CURRY (Justice of the Peace), No. 11727½.

To compel respondent to vacate a sentence, quash the complaint and discharge relator, who had been tried, convicted and sentenced to pay a fine, under Act No. 134, Laws of 1885, and the amendment thereto, being Act No. 196, Laws of 1887, the relator insisting that said Acts are unconstitutional.

Order to show cause denied January 20, 1891.

287 HULL vs. CIRCUIT JUDGE (Wayne), No. 12294½.

To compel respondent to admit relator to bail.

Order to show cause denied October 7, 1891.

Hull was charged with murder. He had been admitted to bail and was ordered into custody pending the trial.

288 HAHN vs. CIRCUIT JUDGE (Wayne), No. 14025½.

To vacate an order increasing bail from the sum of \$500, fixed by the justice before whom the examination was had, to \$2,000, on complaint for selling liquor without having paid the tax.

Order to show cause denied February 13, 1894.

289 IVES vs. CIRCUIT JUDGE (Muskegon), 40 M., 63.

To compel respondent to proceed with the trial of a case after an injunction to restrain it had been granted.

Denied January 8, 1879.

290 HEATH vs. CIRCUIT JUDGE (Kent), 37 M., 372.

To compel the court to resume control of a case after ordering its transfer to Superior Court, pending a hearing of the case.

Granted October 16, 1877.

291 PASSMORE vs. CIRCUIT JUDGE (Saginaw), 54 M., 237.

To transfer a cause in a case where the circuit judge in the exercise of his statutory power had passed upon certain disputed facts respecting such transfer.

Denied June 19, 1884.

292 MACLEAN vs. CIRCUIT JUDGE (Wayne), 52 M., 257.

To vacate order restraining proceedings in the Superior Court of Detroit.

Granted February 8, 1884.

Relator had recovered judgment in the Superior Court. A new trial had been denied therein. Defendant then filed a bill in the Wayne Circuit, alleging misconduct of the jury in the principal suit, and praying for the cancellation of the judgment.

293 SCHRATZ ET AL. vs. SUPERIOR COURT JUDGE (Detroit), 31 M., 407.

To compel respondent to vacate an order dismissing a case which had been transferred from the Wayne Circuit Court.

Denied April 8, 1875.

The matter had been appealed from the report of the commissioners on claims to the Wayne Circuit Court, and it was held, that such actions were not transferrable to the Superior Court. See No. 161.

294 RANKIN ET AL. vs. Circuit Judge (Wayne), 39 Mich., 115.

To set aside an order vacating an order of removal to the Superior Court.

Granted June 18, 1878.

Held, that the cause had been regularly transferred and that the circuit had lost jurisdiction.

295 TURNER vs. CIRCUIT JUDGE (Wayne), 27 M., 4.

To compel respondent to transfer a cause pending in the Wayne Circuit Court to the Superior Court of the City of Detroit.

Granted April 12, 1873.

296 FIELD vs. SUPERIOR COURT JUDGE (Detroit), 30 M., 9.

To compel the dismissal of a case transferred to the Superior Court from the Circuit.

Denied July 14, 1874.

Held, that relator by his course of action in the Superior Court was precluded from raising the questions sought to be determined.

297 JONES vs. CIRCUIT JUDGE (Kent), 35 M., 494.

To vacate an order transferring a Chancery cause, some of the parties to which resided in the City of Grand Rapids and others without, to the Superior Court, and to proceed with said case according to the practice of said Circuit Court.

Granted January 19, 1877.

298 JONES vs. CIRCUIT JUDGE (Kent), 34 M., 373.

To compel the vacation of an order transferring a cause from the Circuit to the Superior Court.

Denied June 21, 1876, on the ground that the record failed to show upon what papers the circuit judge based his action.

299 SCOTT ET AL. vs. CIRCUIT JUDGE (Wayne), 58 M., 311.

300 SCOTT ET AL. vs. SUPERIOR COURT JUDGE (Detroit), 58 M., 311.

To vacate orders in a certain cause made since proceedings taken to remove said cause to the Superior Court, and to vacate an order for the appointment of a receiver for an assigned estate.

Denied October 28, 1885.

Held, that statutory proceedings to take charge of and administer assigned estates are special and peculiar, and are not removable to a court of merely municipal jurisdiction, and that mandamus will not lie to review an order for the appointment of a receiver of an assigned estate.

301 MUIR ET AL. vs. SUPERIOR COURT JUDGE (Detroit), 28 M., 265.

To compel respondent to vacate and set aside an order dismissing a case which had been transferred from the Wayne Circuit Court.

Granted October 28, 1873.

302 WOOD vs. CIRCUIT JUDGE (Kent), No. 14839, 105 M., 378.

To vacate an order granting a petition for temporary alimony in a divorce case, in the Kent Circuit Court, where defendant had filed a petition and bond for the removal of the cause to the Superior Court of Grand Rapids, the circuit judge holding the removal statute to be invalid.

Granted May 21, 1895, with costs against complainant in the chancery cause.

303 MICHIGAN TRUST CO. vs. CIRCUIT JUDGE (Kalamazoo), No. 14966.

To compel the transfer of a chancery case from Berrien to Kent, on the ground that the circuit judge of Berrien is disqualified.

Denied July 2, 1895, with costs.

The respondent held that the allegation as to the disqualification of the circuit judge was not sustained.

304 UNDERWOOD vs. CIRCUIT JUDGE (Kent), No. 14773½.

To compel respondent to reinstate an order originally made by him, but afterwards set aside, transferring a cause from the Newaygo Circuit to the Kent Circuit because of the disqualification of the judge of the first named Circuit.

Order to show cause denied March 19, 1895.

305 BABBITT vs. CIRCUIT JUDGE (Washtenaw), No. 15587½.

To compel the transfer of a cause from the Wayne Circuit to the Washtenaw Circuit, upon a showing that the wife of one of the judges of the Wayne Circuit Court was an interested party.

Order to show cause denied May 5, 1896.

306 BUTLER vs. CIRCUIT JUDGE (Wayne), 41 M., 654.

To vacate an order removing a cause commenced in the Wayne Circuit by relator, a resident of Macomb County, against a resident of the City of Detroit, to the Superior Court of Detroit.

Denied October 14, 1879.

307 CALLAGHAN vs. SUPERIOR COURT JUDGE (Detroit), 59 M., 610.

To vacate an order remanding a case to the Circuit Court for the County of Wayne.

Granted February 10, 1886, on the ground that Act No. 62, Laws of 1885, providing for the transfer of causes to the Wayne Circuit Court is unconstitutional.

308 KITTRIDGE ET AL. vs. CIRCUIT JUDGE (Washtenaw), 80 M., 200.

To compel the removal of a common law assignment and all proceedings thereon, under How. Stat., Secs. 6495-6502, providing for the transfer of causes.

Granted April 11, 1890.

Held, that upon application to the Chancery Court to exercise its supervisory powers over common law assignments, the assignment becomes a civil proceeding pending in the Circuit

Court, and is subject to be transferred under the statute referred to, where the presiding judge is disqualified to sit in the cause. Citing *Frazer vs. Circuit Judge*, 48 M., 176 (161).

309 SIMPSON ET AL. vs. CIRCUIT JUDGE (Alpena), 81 M., 116.

To vacate an order transferring a cause from the Alpena to the Wayne Circuit Court, it appearing that neither of the parties, or their attorneys, were residents of the County of Wayne.

Granted May 16, 1890.

310 HOVEY ET AL. vs. CIRCUIT JUDGE (Kent), Nos. 12500 and 12500½.

To compel respondent to remand certain cases to Ingham Circuit.

Denied January 20, 1892, with costs in each case.

The cases were removed to the Kent Circuit in September, 1891. Notice of the application had been left at the office of the attorney for relator with a person in charge of the office. After the transfer of the cases, several letters passed between the attorneys of the respective parties, respecting the trial of the cases in the Kent Circuit, and the application for the writ was denied on the ground of waiver.

311 KELLEY vs. CIRCUIT JUDGE (Alcona), 79 M., 392.

To vacate an order transferring a case from the Alpena Circuit to the Saginaw Circuit.

Granted January 31, 1890, on the ground that there was no proof that the judge of the Circuit Court to which the case is transferred is not disqualified, and that the substitution of attorneys residing at Saginaw was not made in good faith.

312 SMITH vs. EDWARDS (Ct. Ct. Comr.), No. 11803½.

To vacate an order transferring a cause from the Jackson to the Eaton Circuit.

Denied February 13, 1891.

Relator had commenced a suit against one Thompson, in the Jackson Circuit. Thompson appeared and pleaded by attorneys residing at Charlotte and on the same day applied for the transfer. The answer conceded the disqualification of the Jackson circuit judge, but insisted that the employment of attorneys in Eaton County was solely for the purpose of obtaining the removal of the cause to that circuit, and that question was fully gone into upon the hearing before the respondent.

313 GLENS FALLS INS. CO. vs. CIRCUIT JUDGE (Jackson), 21 M., 577.

To compel respondent to remove a cause, pending in the Jackson Circuit, to the Circuit Court of the United States.

Denied October 21, 1870.

A mandamus from the Supreme Court to compel an inferior State Court to remove a cause to the United States Circuit Court, upon the application of a defendant who is a citizen of another State, is not the appropriate writ for that purpose.

314 LE ROUX ET AL. vs. CIRCUIT JUDGE (Bay), 45 M., 416.

To set aside an order of removal to a Federal Court.

Denied January 27, 1881, for the reason that the record does not show that any application had been made to the respondent to vacate the order.

315 YAWKEY vs. RICHARDSON ET AL., 9 M., 528.

Yawkey, a non-resident, was joined as defendant with one Emerson, for the purpose of defeating Yawkey's right to have

the case removed to the Federal Court, and plaintiff was allowed on the trial to discontinue as to Emerson. Defendant in error insisted that liberty to discontinue under the rule was, if not an absolute right, at least in the uncontrolled discretion of the court, and if controllable, it was by a mandamus and not by exception.

The court discussed the question, but did not determine it, and reversed the judgment on the exception.

316 NILES (Admr.) vs. CIRCUIT JUDGE (Schoolcraft), No. 14305, 102 M., 328.

To compel vacation of order sustaining a challenge to the jury array.

Denied October 16, 1894, with costs.

317 SHELLEY vs. RECORDERS' COURT JUDGE (Detroit), No. 15969½.

To set aside an order dismissing a juror who had been summoned to attend court as a petit juror for the November term of the Recorders' Court, it appearing that said person so summoned had, within three years, served as one of the traverse jurors in the Circuit Court of the United States for the Eastern District of Michigan, the respondent holding that such service disqualified relator under Sec. 5, Act 204, Laws of 1893.

Denied December 18, 1896.

318 HEWITT vs. CIRCUIT JUDGE (Saginaw), 71 M., 287.

To vacate an order sustaining a challenge to the array and discharging the jury.

Granted July 11, 1888.

Held, that the charter provision creating the office of asses-

sor, and requiring such officer to make and return lists of persons to serve as jurors, supersedes the general statute in that regard, and is valid. Also that the return of more than 200 qualified petit jurors under How. Stat., Sec. 7566, is good cause for a challenge to the array, but in such a case it is the duty of the court to direct the clerk to strike from the excessive list all names listed below the requisite number.

319 ATTORNEY GENERAL vs. SUPERIOR COURT JUDGE (Grand Rapids), No. 14233.

To vacate an order sustaining a challenge to the array of jurors, after the impanelling of the jury for the trial of a criminal case.

Granted June 20, 1894.

Relator insisted that if an inferior court abstain from entering upon the merits of a cause in consequence of its arriving at an erroneous decision upon a preliminary point law, this will be regarded as a refusal to hear, and mandamus to hear and determine will be granted. Short on Extraordinary Remedies, 296; Rex vs. Richards, 20 L. J. B., 352. That there is no rule of law to prevent the review of criminal proceedings which have not gone to trial, Robison vs. Records' Court Judge, 59 M., 529 (236); Hewitt vs. Circuit Judge, 71 M., 287 (318); Reg vs. Justices, 2 Q. B. D., 516; State vs. Ellis, 6 So. Rep. (La.), 55.

The objections to the jury were that the lists returned contained a less number of names than is required by How. Stat., Sec. 6582; that in one instance the list filed with City Clerk differed from that filed with the Clerk of the Court; that no list was filed with the City Clerk from one ward and that from two wards substantially the same list was filed for the Circuit Court, as was filed for the use of the Superior Court for the same year. Relator contended that the statutory provisions as to the time and mode of selection of jury lists are directory and not mandatory, Thompson & Merriman on Juries, Secs. 47, 134, 139; Com. vs. Walsh, 124 Mass., 32; Thomas vs. People, 39 Mich., 309; People vs. Coffman, 59 Mich., 1.

320 JAHRAUS vs. CIRCUIT JUDGE (Iosco), No. 12074.

To compel the vacation of an order fixing certain terms of court at Au Sable.

Denied July 1, 1891.

The circuit judge made the order under Act No. 32, Public Acts 1891.

Held, ruled by Whallon vs. Circuit Judge, 51 M., 503 (321).

**321 WHALLON (County Clerk) vs. CIRCUIT JUDGE (Ingham),
51 M., 503.**

To vacate an order requiring relator to be present with the court records, files, etc., at the City of Lansing at the opening of a session of the court at that place, the county seat of said county being at Mason, and the Legislature of 1883 having provided that two terms of said court during each year should be held at Lansing.

Denied October 17, 1883.

**322 SCHATTLER vs. CIRCUIT JUDGE (Wayne), No. 15665½; 68
N. W., 1102; 3 D. L. N., 370.**

To vacate an order setting the trial of a quo warranto proceeding for a day certain in term, upon motion of the prosecuting attorney, the issue having been but recently framed, the case not being upon the docket and no "notice of trial" having been given, nor could the same have been given after issue joined.

Order to show cause denied June 17, 1896, on the ground that quo warranto proceedings are governed exclusively by Chap. 298, How. Stat. and that How. Stat. Sec. 7551 does not apply.

323 RANDALL vs. CIRCUIT JUDGE (Wayne), No. 14200½.

To compel respondent to proceed with the trial of a certain cause in which relator is plaintiff, notwithstanding the engagement of the counsel for defendant in the trial of another cause.

Order to show cause denied May 11, 1894.

324 NEWBERRY vs. CIRCUIT JUDGE (Wayne), No. 15240; 65 N. W., 530; 2 D. L. N., 747.

To vacate an order directing the police department of the city of Detroit to take charge of the remnants of a boiler which had exploded, killing a number of persons, pending the trial of the engineer, against whom the grand jury had returned an indictment, charging him with manslaughter.

Granted December 24, 1895, without costs.

325 WOODIN (Admr.) vs. PHOENIX ET AL., 41 M., 655.

Certiorari does not lie to review the action of a circuit judge in appointing himself referee in a cause pending before him; but mandamus lies to set it aside. October 21, 1879.

326 WEBB vs. CIRCUIT JUDGE (Oakland), No. 11751.

To compel the circuit judge to enter an order requiring the prosecuting attorney to indorse upon an information the names of four physicians as witnesses.

Granted February 6, 1891.

On May 5, 1890, and again on May 20, 1890, relator, a school teacher, punished Frank Cook, a pupil, by striking him upon the legs with a strap. He remained in school three days after the second whipping, was taken sick Sunday, May 25, 1890, and died July 30, 1890. The teacher was informed against for manslaughter. Teacher and pupil were the only persons present when the punishments were inflicted. Six physicians, A., B., C., D., E. and F., visited the boy during his illness and examined him as to the probable cause of his sickness. D. was called by the mother and treated him May 13 and 14 for a throat difficulty. He was called again May 25, and attended him until May 27, when A. and B. were called, who remained in attendance until his death. E. examined him May 28, C. May 29, and D. and F.

examined him June 28. Upon the question as to whether the whipping caused the death the physicians disagreed. The names of A. and B. only appear upon the information, although C. was a witness upon the preliminary examination.

Relator's counsel cited, *People vs. Potter*, 5 M., 6; *Brown vs. People*, 17 M., 433; *People vs. Insurance Co.*, 19 M., 396 (1678½); *Hurd vs. People*, 25 M., 415; *People vs. Wellar*, 30 M., 22; *People vs. Marble*, 38 M., 117; *People vs. Hall*, 48 M., 485; *People vs. Davis*, 52 M., 573; *People vs. Millard*, 53 M., 67; *People vs. Vanderhoof*, 71 M., 178; *People vs. Swetland*, 77 M., 53; *Reg. vs. Holden*, 8 C. & P., 549; *Donaldson vs. Com.*, 95 Pa. St., 24.

327 HAHN vs. RECORDERS' COURT JUDGE (Detroit), No. 14069½.

To grant a motion requiring the prosecuting attorney to furnish to defendant's counsel, in a criminal case, prior to the trial, a copy, or permit a copy to be made of an alleged confession of the defendant.

Order to show cause denied March 6, 1894.

328 VAN VRANKEN ET AL. vs. CIRCUIT JUDGE (Wayne), No. 11912, 85 M., 140.

To vacate an order requiring relator to furnish a bill of particulars, in an action for breach of contract where the damages are unliquidated.

Denied, without costs, April 15, 1891.

Held, that ordinarily an order requiring a bill of particulars will not be reviewed or disturbed, but in the present case the court went beyond what is properly required to be stated in a bill, and in such case the Supreme Court will correct the action of the trial court.

329 MEAD vs. CIRCUIT JUDGE (Wayne), No. 15319½.

To vacate an order requiring plaintiff, in an action for alienating his wife's affections and crim. con. to furnish to defendant

a bill of particulars of the places and acts alleged to have been committed in the counts for crim. con.

Order to show cause denied December 30, 1895.

330 HAMILTON vs. CIRCUIT JUDGE (Ingham), No. 11636, 84 M., 393.

To compel respondent to vacate an order requiring plaintiff to file a more specific bill of particulars.

Granted in part January 16, 1891.

Held, (1) that a specification in a bill of particulars of an item of plaintiff's demand as "two-thirds of whatever sum remained in defendant's hands of the \$412,250, received by him" on or about a given date, for certain bonds and stock after paying certain notes, describing them, but not giving their amount, is too uncertain and indefinite in the amount claimed, and should be amended or made more specific; and (2) that an order requiring a plaintiff to file an amended or specific bill of particulars under a common count declaration in assumpsit, showing how and by what right and when the plaintiff or his assignors became entitled to each item of plaintiff's claim, as stated in his original bill of particulars, and how and when he acquired such right, calls for information not required to be given in a bill of particulars.

331 CLINK vs. CIRCUIT JUDGE (Muskegon), No. 14811.

To vacate an order dismissing relator's suit because of his failure to file a more specific bill of particulars.

Denied April 18, 1895, with costs.

Suit commenced October 20, 1890. Bill of particulars served December 19, 1890. January 21, 1891, demand for a more specific bill. March 31, 1894, defendant moved the court for a more specific bill. June 18, 1894, ordered that said cause be dismissed unless plaintiff within ninety days file and serve an amended and more specific bill.

No amended bill having been furnished on September 19, 1894, defendant entered a motion to dismiss, and on October 8, 1894, the motion was granted.

332 EVERETT vs. CIRCUIT JUDGE (Marquette), 39 M., 437.

To vacate an order requiring plaintiff to furnish a bill of particulars, in an action of case for consequential injuries.

Granted October 22, 1878.

333 HORNING vs. CIRCUIT JUDGE (Mecosta), No. 15131.

To vacate order adjudging relator guilty of contempt of court for neglecting to comply with an order of court, requiring the payment of the solicitor's fees in a divorce case, then pending, on the ground that although the order for the payment of the solicitors' fees was made before the decree, the order adjudging relator guilty of contempt was not made until after decree and after an appeal from such decree.

Denied October 23, 1895, with costs, on the ground that appeal is the more appropriate remedy.

334 PETRIE vs. CIRCUIT JUDGE (Muskegon), No. 13152.

To set aside order granting a continuance which was based upon a ruling that the cause was not at issue.

Denied December 1, 1892, with costs.

Bill filed against relator and another—answered—replication filed—application for leave to amend answer granted—amended answer filed.

Relator, before time to except or reply had elapsed, attempted to press the case on for hearing. Court below held that the case was not at issue.

335 HOFFMAN vs. CIRCUIT JUDGE (Oscoda), No. 13933½.

To vacate an order discharging the jury and adjourning the cause over the term after plaintiff had rested his case, and defendant (relator) had moved for a verdict in his favor.

Order to show cause denied January 2, 1894.

336 WORTH vs. HAND, 30 M., 263.

The question of the validity of a notice of trial will not be reviewed on writ of error; the proper remedy is mandamus. October 7, 1874.

337 MUSKEGON BOOMING COMPANY vs. CIRCUIT JUDGE (Muskegon), No. 16317½.

To strike from the docket a cause commenced June 27, 1895, against relator, a domestic corporation which was dissolved March 1, 1894, by expiration of its charter, and no order had been applied for or made under How. Stat., Secs. 4867-8211, continuing such suit to final judgment.

Order to show cause denied May 18, 1897.

338 TORREY vs. CIRCUIT JUDGE (Wayne), 38 M., 614.

To require respondent to restore a case appealed from commissioners on claims, to the docket, which had been stricken therefrom because the plea was not filed with the notice of trial.

Granted April 9, 1878.

339 GREENWOOD SCHOOL DIST. vs. CIRCUIT JUDGE (St. Clair), 41 M., 549.

To vacate an order striking a cause from the docket for want of due notice.

Granted October 8, 1879.

Held, that service of notice of trial by mail is sufficient if made on an attorney or on a party who appears in person in an appeal case in the circuit.

340 ROSKOPP vs. CIRCUIT JUDGE (Macomb), No. 13817, 97 M., 628.

To strike from the calendar a cause commenced by attachment, where the attachment was dissolved by a circuit court commissioner, and relator had appealed and notice of trial of the appeal was served upon the attorneys for plaintiff, who had appeared before the commissioner and resisted the dissolution.

Denied November 15, 1893, with costs.

341 KELLY vs. CIRCUIT JUDGE (Wayne), No. 12518½, 90 M., 264.

To compel respondent to strike cause from chancery hearing docket, because not at issue as to all of the defendants.

Granted February 10, 1892, with costs against complainant in the chancery cause.

**342 COFRODE ET AL. vs. CIRCUIT JUDGE (Wayne), 79 M., 332;
7 L. R. A., 511.**

To vacate an order striking a case from the trial docket.

Granted January 31, 1890.

The cause of action and the subject matter thereof arose in the Upper Peninsula, under a contract for building a road in that locality. Plaintiffs had commenced suit by attachment in Marquette County, but for reasons stated that suit was discontinued, and this commenced by a mutual understanding between the parties. Both plaintiffs and defendants are residents of other States. Upon an application for a struck jury the Circuit Court of its own motion struck the case from the docket, giving as his reasons therefor the following:

"1. That the said Circuit Court has no jurisdiction of said alleged cause.

"2. That the consent of parties and their attorneys does not and cannot confer jurisdiction upon the court, inasmuch as all parties, both the alleged plaintiffs and the alleged defendants, are non-residents of this State.

"3. That, if jurisdiction can be conferred by consent of parties and attorneys, it does not become obligatory upon the court to entertain jurisdiction, but whether the same shall be entertained or not by the court is a matter which rests in the sound discretion of the court; and that public convenience and interest are paramount to the private convenience of the parties.

"4. That it is apparent from the facts set out that the said alleged suit is brought into the Circuit Court for the County of Wayne for the convenience of the parties and their attorneys only."

343 RANDALL vs. CIRCUIT JUDGE (Wayne), No. 11952½.

To compel respondent to strike cause from docket.

Order to show cause denied April 21, 1891.

Relator's attorney had officed with him, but had left the city a short time before the service of notice of trial, and the notice was left with relator's clerk in charge.

344 STEBBINS vs. CIRCUIT JUDGE (Barry), 27 M., 170.

To compel the respondent to proceed to the hearing of a chancery cause that had been noticed for hearing in open court.

Granted April 24, 1873.

Held, that while the court was authorized to make provision for hearing cases otherwise than on testimony taken in open court, that could only be by a special order upon good cause shown, and until that is done relator had a right to notice his cause for hearing, and have it placed upon the docket.

345 DUNN vs. SUPERIOR COURT JUDGE (Detroit), 29 M., 227.

To require respondent to place a chancery cause pending in said court, wherein relator is complainant, which was not in readiness for hearing in time to be noticed for the first day in term, but the relator's solicitors noticed it for a subsequent day, upon the calendar for the current term at the foot thereof.

Denied April 22, 1874.

The case was at issue on the bill, answer and replication, and defendant thereupon took the proper steps and obtained an order for the examination of witnesses in open court.

Held, that cases where witnesses are to be examined in open court must be noticed for hearing for the first day of term.

346 RANDALL vs. CIRCUIT JUDGE (Wayne), No. 13380, 96 M., 284.

To vacate an order requiring relator in a libel suit to elect upon which count of his declaration he would proceed.

Granted June 30, 1893, with costs.

347 PECK ET AL. vs. CIRCUIT JUDGE (Kent), No. 13936, 98 M., 639.

To compel respondent to vacate an order striking from the files in a chancery cause, the papers relating to the appointment of a guardian ad litem, for an infant defendant, under How. Stat., Secs. 8132-8133.

Granted February 6, 1894, with costs against defendants in the chancery cause.

348 HOFFMAN vs. CIRCUIT JUDGE (St. Clair), 40 M., 351.

To require the defendant to enter an order reviving a cause against the legal representative of a deceased defendant, who was one of several defendants in an ejectment suit, the court having

entered an order reviving the cause as against the surviving defendants.

Denied January 31, 1879.

349 SEIBLY (Admr.) vs. CIRCUIT JUDGE (Ingham), No. 14588, 105 M., 584.

To vacate an order reviving a cause against the administrator of a decedent, at the instance of the former wife of decedent, who had upon a bill filed by her obtained a decree of divorce, wherein the question of alimony was reserved for further order and decree.

Granted June 4, 1895, without costs.

350 LLOYD vs. CIRCUIT JUDGE (Wayne), 56 M., 236.

To vacate an order made, pending the trial of an appeal from an order of the Probate Court disallowing a will, discharging the jury and affirming the disallowance of the will by the Probate Court, on the expressed ground that the act under which the proceedings were taken was unconstitutional.

Granted April 9, 1885.

Relator presented his will for probate and allowance during his lifetime, under Act No. 25, of the Laws of 1883.

Held, that as the order of the Circuit Court is a final order affirming the action of the probate judge, upon which, if the proceeding is judicial, a writ of error would lie to this court, such is the proper remedy; that mandamus is a proper process for setting a court in motion, but not for reviewing and setting aside its affirmative and judicial action when another suitable and judicial remedy exists, but as the parties have been fully heard and the reasons for declining to dispose of the case on the merits at this time would be only technical, the matter of form will be overlooked; that Act No. 25 of the Laws of 1883 is inoperative, but that the order entered by the Circuit Court was improper and

extra-judicial; that an order denying the probate of the will should not be affirmed without a hearing had on the merits, and that the proceedings should have been quashed or dismissed.

351 MORSE vs. CIRCUIT JUDGE (Wayne), No. 14877½.

To vacate an order made in a proceeding to enforce a mechanic's lien, suspending the hearing thereof because the affidavit required by Sec. 4 of Act No. 179, Laws of 1891, had not been filed, and giving to petitioners five days within which to file such affidavit, five days more to amend the petition and to respondents ten days thereafter to amend their answer.

Order to show cause denied April 30, 1895.

352 MAIER (By Guardian) vs. CIRCUIT JUDGE (Wayne), No. 16195; 4 D. L. N., 97; 70 N. W., 1032.

To vacate an order entered in a chancery cause, brought to annul a marriage ceremony, submitting to a jury the question of the mental competency of complainant and providing that the verdict when reported back is to be decisive upon the question. The case having been noticed for hearing and no demand for, or mention of, the jury trial having been made, and the parties being in court ready for trial, the court, upon the application of the defendant, made the order in question.

Held, that How. Stat., Sec. 6622, is not mandatory and may be waived; that the court would have been justified in denying the application for trial by jury, upon the ground of waiver; that nevertheless the court had the authority upon its own motion to send the question to the jury, but in such case the verdict is advisory merely.

The writ was, therefore, granted, vacating that portion of the order making the verdict conclusive; but without costs, April 27, 1897.

353 DETROIT, LANSING & NORTHERN RY. CO. vs. PROBATE JUDGE (Livingston), 63 M., 676.

To vacate an order continuing a railway company in possession, pending proceedings instituted to condemn a crossing, where proceedings under a former petition had been had and the company had taken forcible possession and built a crossing; the proceedings had been removed to the Circuit Court and finally to the Supreme Court, and before the matter had been determined a new petition was filed and an order obtained permitting the occupancy of the crossing during the pendency of the latter proceeding.

Granted November 17, 1886.

354 FRAZER vs. CIRCUIT JUDGE (Wayne), 39 M., 198.

To vacate an order consolidating two several appeals from the allowance and probate of a will.

Denied June 21, 1878.

355 GRAVES vs. CIRCUIT JUDGE (Wayne), No. 16282.

To require respondent to vacate an order denying an inquest, in a suit upon a bond given on appeal to the Supreme Court, "because the bond upon which this action is brought is not a money bond within the meaning of Rule No. 14."

Denied, with costs, May 25, 1897.

356 PARKS vs. CIRCUIT JUDGE (Marquette), 38 M., 244.

To compel respondent to grant an order to stay waste in an action of ejectment.

Denied January 23, 1878.

Held, that an order to stay waste is discretionary and will not

be compelled by mandamus, and if one who is entitled to such order does not seek it in an affirmative suit at law or in equity, he has no remedy for its refusal.

357 FISHEL vs. CIRCUIT JUDGE (Grand Traverse), No. 13275, 97 M., 609.

To vacate an order made in a pending chancery suit, ordering an election of officers of the Hebrew Congregation Bethel, of Traverse City, to be held in the synagogue of said congregation.

Denied February 1, 1893, with costs, on the ground that it appeared from the return that the order complained of was a consent order.

358 DENNIS vs. CIRCUIT JUDGE (Kent), 42 M., 249.

To vacate an order directing a special administrator to pay into court money withdrawn therefrom by his predecessor, under an order improvidently granted.

Denied November 2, 1879.

359 SHEAHAN (Guardian ad litem) vs. CIRCUIT JUDGE (Wayne), 42 M., 69.

To compel respondent to recall certain money belonging to infants, which was paid out of court into the hands of certain parties assuming a right to receive it as attorneys for the general guardian.

Granted October 29, 1879.

360 TREGASKIS vs. SUPERIOR COURT JUDGE (Detroit), 47 M., 509.

To vacate an order putting a receiver in possession of certain personal property, which the relator claims to have purchased of parties who had bought it at a mortgage foreclosure.

Denied January 18, 1882.

The mortgage was given by a corporation to a trustee for the benefit of certain directors. The bill alleged that the mortgage was without consideration, fraudulent and void, and it was claimed that relator was not a bona fide purchaser.

361 PHILLIPS vs. CIRCUIT JUDGE (Wayne), No. 16202½.

To enter an order requiring a receiver to turn over to relator, out of moneys in his hands, \$246.60, to satisfy a judgment recovered by relator against one Richardson.

Order to show cause denied April 13, 1897.

Relator attached a stock of goods belonging to Richardson. Two days afterwards certain clerks and employes of R. filed a bill under 3 How. Stat., Sec. 8749o, alleging that they had preferred labor claims against R., an insolvent. An injunction was issued restraining relator from proceeding under his attachment.

A receiver was subsequently appointed, who took charge of the stock and sold it.

362 CHILDS ET AL. vs. CIRCUIT JUDGE (Saginaw), No. 12864.

To compel respondent to enter an order requiring a receiver to pay over to relators the amount realized upon receiver's sale of certain merchandise, upon which relators held a chattel mortgage, which was adjudged valid by the Supreme Court in Weber et al. vs. Childs et al., 90 M., 498.

Order to show cause granted June 7, 1892.

363 SMITH ET AL. vs. CIRCUIT JUDGE (Menominee), 53 M., 560.

To vacate an order requiring relators, as garnishee defendants, having in their possession, as mortgagees, certain goods and chattels, to turn over the said goods and chattels to a receiver ap-

pointed by the court, directing the receiver to sell, and out of the proceeds to pay (1) the costs and expenses of the receivership sale, etc., (2) relator's lien, and (3) plaintiff's judgment.

Granted April 20, 1884.

364 McPHEE vs. CIRCUIT JUDGE (Wayne), No. 15653½.

To vacate an order forfeiting a recognizance and ordering relator's re-arrest, where he had been taken before a justice upon complaint for assault and battery and convicted, and on appeal to the Circuit Court had been required to enter into a recognizance for his appearance, and relator insisted that the justice had no authority to require the recognizance and that the Circuit Court was without jurisdiction in the matter.

Order to show cause denied June 11, 1896.

365 MOSHER vs. CIRCUIT JUDGE (Bay), No. 15196; 66 N. W., 478; 2 D. L. N., 965.

To vacate an order directing the sale of lumber and shingles, seized on attachment, at the suit of the First National Exchange Bank, as "perishable property" within the meaning of Sec. 8011, How. Stat.

Granted March 11, 1896, with costs against the bank.

366 TILLOTSON vs. CIRCUIT JUDGE (Saginaw), No. 13787, 97 M., 585.

To compel respondent to vacate an order fixing a time for hearing a motion to ascertain the amount due a defendant, in an action of ejectment, for taxes and improvements, the tax deed under which he claimed the land having been adjudged invalid in said action.

Granted November 28, 1893, with costs.

367 CITIZENS' SAVINGS BANK vs. CIRCUIT JUDGE (Ingham), No. 13802, 98 M., 173.

To compel respondent to permit relator, a creditor, to intervene in a proceeding instituted by the bank commissioner against an insolvent bank, allow an issue to be framed and the liability determined, where a receiver had been appointed who refused to allow relator's claim.

Held, that relator was entitled to intervene, have an issue framed and a trial thereof, but that the issue of the writ was unnecessary. December 22, 1893.

368 STRADLEY vs. CIRCUIT JUDGE (Chippewa), No. 13456.

To compel respondent to vacate an order denying leave to relator, a stockholder, to intervene in a foreclosure proceeding, and defend in a case where the corporation itself had allowed an order pro confesso to be entered.

Denied June 30, 1893, with costs, on the ground that, in his petition to the court below the charges of fraud and collusion were made upon information and belief and unsupported by other proof.

369 RIVERSIDE IRON WORKS vs. CIRCUIT JUDGE (Wayne), No. 13969, 100 M., 124.

To compel respondent to vacate an order allowing certain creditors, whose debts had not been merged in judgment, to intervene, answer and file a cross-bill resisting the petition of the relator, filed under How. Stat., Sec. 8153, upon the return of an execution unsatisfied, for the sequestration of the stock and property of the corporation and the appointment of a receiver of the same.

Granted April 17, 1894, with costs.

370 OSGOOD ET AL. vs. CIRCUIT JUDGE (Monroe), No. 16113.

To compel respondent to set aside an order denying relators leave to intervene in proceedings instituted February 1, 1897, by a mortgagee of certain lands to set aside so much of a decree, entered in November, 1895, in the matter of the petition of Stanley W. Turner, Auditor General, for and in behalf of the State of Michigan, for the sale of certain lands for taxes assessed thereon, as directed the sale of said mortgaged lands and to cancel the bid of the State for said lands.

Denied, with costs, June 7, 1897.

Relators had deposited with the auditor general the amount of the State bid and were awaiting a deed. On filing the petition of said mortgagee, an order was made requiring the auditor general to show cause on February 12, 1897, why the prayer of the petitioner should not be granted.

Relators on the 9th of February, 1897, filed their petition for leave to intervene, and gave notice to the attorneys for said mortgagee that the same would be brought on for hearing on February 12, 1897.

Counsel for relators resided at Lansing and did not reach Monroe until some time after the court had convened, and was then informed that the matter of the mortgagee's petition had been heard and the prayer of the petition granted. Counsel then called up the application for leave to intervene, and after hearing the parties the court denied the application.

371 ANDREWS vs. CIRCUIT JUDGE (Wayne), No. 15902.

To vacate an order entered in an appeal, by relator, from the report of commissioners on claims, allowing creditors to appear by attorney and resist appellant's claim.

Denied November 20, 1896, with costs.

372 RABINEAU vs. CIRCUIT JUDGE (Wayne), No. 15200½.

To vacate an order requiring relator to join certain parties as defendants to a pending bill filed by her against an insurance company, and one to whom the policy had been assigned in trust for relator, asking for the removal of the trustee and the payment of the money over to her guardian.

Order to show cause denied November 5, 1895.

The insurance company had already paid the amount of the money into court and been discharged, but claiming that certain dividends arising upon another policy which was held in trust for other children of decedent, had been used to pay the premiums upon this policy, it prayed that the other children might be made parties defendant to relators' bill in order that the whole matter might be adjusted and it relieved from liability.

373 FIFTH NATIONAL BANK vs. CIRCUIT JUDGE (Clinton), No. 12025½.

To compel respondent to vacate certain orders.

Order to show cause denied June 9, 1891.

A debtor executed a chattel mortgage to High, as trustee for the bank and others, and afterwards made an assignment. The assignee did not qualify, and a receiver was appointed. The bank's claim had been reduced after the execution of the mortgage, and the circuit judge ruled that as between the claims secured by said mortgage, the bank was entitled to a dividend upon the balance only.

374 FIFTH NATIONAL BANK vs. CIRCUIT JUDGE (Clinton), No. 13998, 100 M., 67.

To compel vacation of an order setting aside an order for the distribution of a trust fund.

Denied April 10, 1894, with costs.

The case had been to the Supreme Court after the order of

distribution was made, and the circuit judge vacated the order, being convinced that it was incorrect under the decree made on the appeal.

375 BISSELL (Executor) vs. PROBATE JUDGE (Wayne), 58 M., 237.

To require respondent to accept an executor's bond which he states he would feel bound to accept as sufficient, were it not for Act No. 179, Laws of 1885, p. 244, which it is claimed imposes new conditions upon such instruments.

Granted October 14, 1885.

376 COMSTOCK ET AL. vs. CIRCUIT JUDGE (Alpena), No. 16053.

To compel respondent to approve a bond in the penal sum of \$250, on appeal by relators from an order appointing a receiver.

Denied, with costs, February 2, 1897.

Relators and Jos. B. Comstock were partners. Jos. B. Comstock died August 17, 1894. In December, 1895, relators filed a bill for an accounting and to close up the partnership matters. At the instance of defendants a receiver was appointed, from which appointment complainants gave notice of appeal and tendered a bond in the sum of \$250, which the circuit judge refused to approve. The circuit judge returns that it was made to appear before him that the interest of the decedent in said co-partnership was worth upwards of \$100,000, and the court ordered a bond in that sum.

377 HORBSTREITH vs. CIRCUIT JUDGE (Kent), No. 12363½.

To compel approval of bond.

Relator applied to the Circuit Court to allow an appeal from an order of the Probate Court admitting to probate the will of

relator's mother. The court declined to grant the application. Relator then filed a claim of appeal to this court, with the clerk of that court, and presented to the circuit judge an appeal bond for approval.

Order to show cause issued November 18, 1891.

378 CARPENTER (Admr.) vs. PROBATE JUDGE (Ottawa), 48 M., 318.

To compel approval of relator's bond as administrator and issue letters of administration.

Denied April 25, 1882.

Held, that while a probate judge cannot arbitrarily reject an administrator's bond, he may require the sureties to justify and the Supreme Court will not interfere with such an exercise of discretion unless in a clear case of abuse.

379 WALKER ET AL. (Executors) vs. PROBATE JUDGE (Wash-tenaw), No. 14282½.

To vacate an order requiring relators to file a bond as executors in the sum of \$100,000, in a case where it is alleged that the real and personal estate disposed of by will is of the value of between \$150,000 and \$175,000, of which amount all is personal property, except about \$25,000, and the probate judge declined to reduce the amount because of lack of power.

Order to show cause denied June 29, 1894.

380 FILDEW vs. CIRCUIT JUDGE (Mason), No. 14701.

To compel respondent to require the receiver of a banking institution to proceed against the former president, whom it is alleged has in his possession a large amount of the assets of said bank, or permit relator to proceed upon indemnifying the

receiver. A mandate was issued February 26, 1895, directing the circuit judge to permit relator to proceed in the name of the receiver, upon the execution of an indemnity bond to that officer, with sureties, to be approved by the circuit judge, with costs against Cartier, former president.

381 BASSETT (Admr.) vs. PROBATE JUDGE (Wayne), No. 11937, 87 M., 167.

To compel the entry, nunc pro tunc, of an order of the Probate Court directing an election by the guardian of an incompetent widow to take under the statute and not under the will of her husband.

Denied July 28, 1891, without costs, on the ground that the election filed by the guardian at the proper time was filed with the knowledge and consent of the Probate Court and had the same legal effect as if the record thereof had been made at the time that said election was filed.

382 MILLER vs. CIRCUIT JUDGE (Wayne), 39 M., 375.

To vacate order for costs imposed as terms upon opening a default.

Denied October 15, 1879.

Held, that such conditions are discretionary.

383 MABLEY vs. SUPERIOR COURT JUDGE (Detroit), 41 M., 31.

To vacate an order setting aside a previous conditional order for a new trial.

Denied June 4, 1879.

Held, that where a new trial is not a matter of right, the judge in granting it may properly impose such a condition as that the parties must waive any supposed right to removal and try the

case at the following term; that the judgment remains in force subject to the conditions, and is not absolutely vacated until they are performed; that the court will not consider matters that were not brought before the court below on the motion to show the improper disposition thereof; that mandamus will not lie to review the discretionary action of inferior courts; that the writ is not one of right and is not usually allowed to those who have been culpably dilatory or otherwise at fault.

384 CONNELLY vs. CIRCUIT JUDGE (Wayne), No. 14667.

To set aside the conditions imposed by an order vacating an order dismissing an appeal.

Denied February 26, 1895, with costs.

Relator appealed in January, 1894, from a judgment of ouster entered by a circuit court commissioner. A motion to dismiss said appeal was entered February 24, 1894, and on February 29, 1894, an order was entered dismissing the appeal unless a new bond be filed within ten days, with ten dollars costs. The conditions were not complied with, but the default was not brought to the attention of the court. The appellee, however, obtained from the clerk a certificate that such an order had been entered and that it had not been complied with, and upon such certificate the commissioner issued a writ of restitution and relator was ousted.

In April, 1894, suit was brought on the appeal bond and judgment was taken therein by default July 17, 1894.

On December 31, 1894, relator moved the court to set aside the order dismissing her appeal because (1) the order of dismissal was entitled Edgar R. Whitcomb vs. Mary Connelly, whereas relator's name is Emma Connelly, and in the proceedings had she was so named;

(2) While no appearance was entered before the commissioner, relator sets forth that she employed one B. as her attorney to represent her there. B. made the affidavit for appeal, the

bond was executed in the name of relator by B., her attorney, and one of the sureties was relator's husband, and notice of the motion to dismiss was served upon B. and proof thereof filed.

The court made an order granting relator's motion upon payment of the amount due upon the land contract under which relator had occupied and the amounts which the plaintiff had expended upon the property since he took possession.

Respondent contended that the service of notice upon B. was a good service, *Roskopp vs. Circuit Judge*, 97 M., 628 (340); and that the record furnished ample means for the correction of the clerical error in the order, *Emery vs. Whitwell*, 6 M., 474; *Merrifield vs. Ingersoll*, 61 M., 4.

385 COMMERCIAL ALLIANCE LIFE INS. CO. vs. CIRCUIT JUDGE (Gratlot), No. 14625½.

To vacate an order requiring the receiver of a foreign insurance company to give a bond for the payment of the judgment, as a condition upon which a verdict against relator should be vacated and a new trial had.

Order to show cause denied January 8, 1895.

386 CITY OF DETROIT vs. CIRCUIT JUDGE (Wayne), No. 15865; 4 D. L. N., 27; 70 N. W., 894.

To vacate that part of an order setting aside a default, entered in a suit against the city, which struck from defendant's plea a notice that the city would show in its defense that no notice in writing was given to the head of the law department, under Sec. 46 of Act No. 463, Local Acts of 1895.

Granted April 27, 1897, with costs.

Respondent insisted (1) that it was within the jurisdiction of the trial court, on setting aside the default, to impose such conditions as to the court might seem reasonable and just, and (2) that no proofs would be permitted to be made under the

notice, as the statute, as to its title, violates the constitutional requirement.

Held, that it was competent to introduce by amendment anything which might have been introduced in the original act, and that it was not within the discretion of the Circuit Court to limit the defense in the manner set forth.

387 GRACE ET AL. vs. CIRCUIT JUDGE (Wayne), No. 13185.

To compel respondent to vacate an order imposing conditions on setting aside a default, which it is claimed was improperly entered.

Order to show cause allowed, returnable January 3, 1893.

Plaintiff moved to amend his declaration and was allowed to amend on payment of \$10 costs. The amended declaration was filed, but the costs were not paid and plaintiff entered a default for want of plea to amended declaration. Defendant moved to set aside the default, the same was granted on condition that defendant plead within five days, and that the cause be placed upon the docket of September term for trial. See *Detroit vs. Circuit Judge (Wayne)*, 386.

On January 4, 1893, the respondent having granted the relief prayed for, relator moved for costs. Denied.

388 RANDALL vs. CIRCUIT JUDGE (Wayne), 36 M., 500.

To set aside an order requiring defendant to enter his appearance upon vacating an order to hold to bail.

Denied June 6, 1877.

Held, a matter within the discretion of respondent.

389 CLUTTON vs. CIRCUIT JUDGE (Wayne), No. 14990, 106 M., 690.

To compel respondent to grant relator's motion for an order permitting him to discontinue a proceeding instituted by him

for a divorce, upon payment of costs, pending an application for alimony and solicitor's fees.

Denied October 22, 1895, with costs.

390 LEAVITT vs. SUPERIOR COURT JUDGE (Detroit), 52 M., 595.

To compel respondent to give effect to a stipulation signed by the parties to a litigation which was to settle and discontinue the suit.

Denied February 6, 1884.

Held, that the questions would not be determined on a summary hearing, and that the stipulation, if its validity be contested, should be brought into the case by plea, and not by motion.

391 VOIGT BREWING COMPANY vs. CIRCUIT JUDGE (Wayne), No. 14265, 103 M., 190.

To vacate an order setting aside a stipulation for discontinuance, signed by the plaintiff in a pending suit, and by defendant's (relator's) attorney.

Granted December 18, 1894, with costs against plaintiff in the court below, on the ground that the lien of an attorney does not attach until the rendition of judgment, and that prior to that he cannot prevent his client from settling the controversy and discontinuing the suit, and that the question of alleged fraud in securing a settlement cannot be tried upon affidavits.

392 WEEKS ET AL. vs. CIRCUIT JUDGE (Wayne), 73 M., 256.

To vacate an order dismissing a suit and setting aside the judgment therein, in a case where plaintiff had agreed that his attorneys, relators herein, were to have a reasonable compensation for their services and disbursements in prosecuting the

suit, from the judgment; and after judgment was obtained the defendant, without the knowledge of the attorneys for either side, settled his suit with the plaintiff, obtained his receipt in full for such judgment and took the order of the court setting aside such judgment and dismissing the plaintiff's suit.

Granted January 14, 1889.

Held, that said agreement operated as an assignment of the judgment to the attorneys to the extent of their claims, and until the same were paid, the plaintiff could give no valid discharge of the judgment.

393 FOWLER vs. CIRCUIT JUDGE (Wayne), No. 14741, 105 M., 90.

To vacate an order permitting plaintiffs in a replevin suit to discontinue.

Granted April 16, 1895, with costs against Saunders.

Rehearing denied July 2, 1895, with costs.

George W. Saunders claimed certain livery stock under a chattel mortgage given to one Blake and assigned to George W. Saunders. Closs held a second and H. & J. a third mortgage. Closs and H. & J. claiming that the mortgage assigned to Saunders had been paid but was not discharged, join, and under their mortgages place relator in possession to foreclose, agreeing that the proceeds, after paying expenses, may be applied pro rata to the payment of their respective claims. Saunders, who is the father of the mortgagor, surrendered the property to Closs, his son-in-law, and Closs goes through the form of a foreclosure of his mortgage, selling the property. Relator insists that the property was taken from his possession and that he held not for Closs alone, but for Closs and H. & J., and that he is entitled to judgment.

394 HEAVENRICH ET AL. vs. CIRCUIT JUDGE (Alpena), No. 15690; 69 N. W., 226; 3 D. L. N., 641.

To vacate orders striking from the files stipulations, discontinuing certain causes, after judgment in each case, upon which counsel therein claim a lien for services.

Denied December 18, 1896, with costs.

395 SAYLES vs. CIRCUIT JUDGE (Genesee), 82 M., 84.

To vacate an order made by respondent, on the petition of the complaining witness, appointing a special prosecuting attorney to examine into a criminal complaint, and determine whether it ought to be prosecuted by an examination before a justice.

Granted July 2, 1890.

396 JONES ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 13381.

To compel the vacation of an order substituting other attorneys for defendant, upon defendant's petition, in a pending cause in the place and stead of relators, on the ground that at the time of such substitution defendant was indebted to relators for services rendered in said cause.

Denied April 7, 1893, with costs.

(1) The order of substitution expressly preserved any lien that might exist, and (2) the lien was lost by judgment against defendant in a suit brought by relators for their services.

397 GALLOWAY vs. CIRCUIT JUDGE (Wayne), No. 13552½.

To vacate an order substituting attorneys.

Order to show cause denied May 31, 1893, on the ground that it did not appear from the petition that the application had been made to the Circuit Court to set aside the order complained of.

398 SLOMAN ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12477.

To compel vacation of order substituting one Nolan as attorney for plaintiff, in a pending suit, in place of relator.

Denied January 20, 1892, with costs.

The suit was for damages, a trial had been had, and judgment for defendants, which was reversed on appeal. Afterwards the motion to substitute was made and granted, the court at the same time ordering that the claim of relators for services and disbursements should be a lien upon any judgment which plaintiff might recover.

Relators insisted that they had made certain advances and were entitled to certain fees, citing *Sheahan vs. Circuit Judge*, 42 M., 69 (359); *Wells vs. Elsam*, 40 M., 218; *Roorey vs. R. R. Co.*, 18 N. Y., 368; *Kinney vs. Tabor*, 62 M., 522; *Potter vs. Hunt*, 68 M., 242.

Respondents contended that plaintiff had a right to have a substitution; that no lien attached until judgment had, and cited *Weeks vs. Circuit Judge*, 73 M., 256 (392); *Wells vs. Hatch*, 43 N. H., 246; *Weeks on Attorneys*, 428; *Stevenson vs. Stevenson*, 3 Edwards, Ch. 340; *Pren-tiss vs. Livingston*, 60 Howard's Prac. Rep., 340; *Hazlett vs. Gill*, 5 Robt. N. Y. Sp. Ct., 611; *In re Paschal*, 10 Wallace, 483.

399 ALLEN vs. CIRCUIT JUDGE (Jackson), No. 12692½.

To compel the granting of an order substituting another as solicitor for plaintiff in a chancery cause.

Order to show cause denied April 5, 1892.

400 NEALEY vs. CIRCUIT JUDGE (Wayne), No. 11721½.

To compel the dismissal of proceedings instituted to disbar relator.

Denied January 7, 1891.

The petition, filed by the prosecuting attorney, contained three specifications:

1. That relator had obtained \$20 from a person charged in the Recorders' Court with keeping a house of ill-fame, falsely

representing that for such sum he could and would get the prosecuting attorney to have an order entered dismissing the case against her.

2. That afterwards, relator caused to be written and sent to the said person so charged, a letter purporting to have been signed by the prosecuting attorney, stating that said case had been dismissed. That the name of the prosecuting attorney was affixed to said letter by relator and was a forgery.

3. That the reputation of said relator for truth and veracity "is so notoriously bad that he is not to be believed under oath."

Relator moved to quash the proceedings, (1) because the Circuit Court had no jurisdiction, relator having been admitted to practice in the Supreme Court; (2) the case in the Recorders' Court was a matter within the jurisdiction of that court; (3) the service upon relator of the order to appear was by the sheriff, and not by the clerk of the court, under How. Stat., Sec. 7184; (4) the copy of the petition of the prosecuting attorney contained no date for relator's appearance (the order, however, gave the date); (5) private counsel was employed by the prosecuting attorney, without the order of the circuit judge or the direction or employment of the county auditors; (6) the second specification is bad, in that it does not refer to relator's general reputation in the neighborhood where he resides (see in re Mills, 1 M., 392); (7) the jurat to the petition omitted the words "being duly sworn" (the jurat set forth that on the date named "personally came before me, the above named" "J. V. D. W. and made oath," etc.).

401 SMITH vs. CIRCUIT JUDGE (Allegan), No. 15127½.

To vacate findings and judgment in the matter of a petition filed to disbar relator from practicing as an attorney at law.

(1) Because relator was denied the right of a trial by jury; (2) because respondent refused to issue process for the attendance of witnesses at the public expense, after the showing that

relator was without property or means, and (3) because certain of the specifications were not sufficiently specific.

Order to show cause denied October 1, 1895.

402 UNDERWOOD vs. CIRCUIT JUDGE (Newaygo), No. 13817½, 97 M., 626.

To compel respondent to vacate an order suspending relator from practice as an attorney at law for one year.

Order to show cause denied November 14, 1893, on the ground that mandamus is not the proper remedy.

403 WITHEY vs. CIRCUIT JUDGE (Osceola), No. 15235; 65 N. W., 668; 2 D. L. N., 828.

To compel respondent to determine relator's compensation for services rendered as attorney, appointed by the court, in the defense of a person charged with a felony, under Act No. 96, Laws of 1893.

Granted December 4, 1895, without costs.

404 WILLCOX (Pros. Atty.) vs. CIRCUIT JUDGE (Wayne), 83 M., 1.

To compel respondent to certify to the statutory fee allowed by Act No. 137, Laws of 1887, for services in a divorce case.

Denied October 31, 1890.

The prosecuting attorney appeared and was present at the taking of testimony on the hearing. At the conclusion of the testimony he became satisfied that the interest of the child and the public good did not require that he should further contest the granting of a decree, and so stated to the court. He afterwards presented to the circuit judge for allowance a bill for the statutory fee.

Held, that it is for services in introducing evidence, appear-

ing at the hearing and opposing the granting of the decree of divorce that the statutory fee is allowed; that inasmuch as he did not introduce evidence or oppose the granting of the decree, he was not entitled to the statutory fee.

405 NOLAN vs. RECORDERS' COURT JUDGE (Detroit), No. 13264.

To compel respondent to certify that relator is entitled to additional compensation for services as attorney in a criminal case under How. Stat., Sec. 9047, on appeal to the Supreme Court.

Denied January 18, 1893, without costs.

It appeared that although relator had assisted in the trial below, another had been appointed by the court to defend, whose bill had been certified for that service; that relator had not been substituted, and no order directing or allowing or appointing relator to take or conduct an appeal had been made.

406 HAYES (Prosecuting Attorney) vs. CIRCUIT JUDGE (Montcalm), No. 14477.

To set aside an order holding that an attorney appointed to assist the relator in the trial of a criminal cause was disqualified under How. Stat., Sec. 7254.

Denied November 23, 1894.

407 FLETCHER ET AL. vs. CIRCUIT JUDGE (Kalkaska), 81 M., 186.

To vacate an order allowing an ex-sheriff fees for the personal custody of attached property.

Granted June 6, 1890.

408 SMITH ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12104½.

To compel respondent to vacate an order allowing the sum of \$100 to a circuit court commissioner as commission on the sale of certain real estate, and the investment of the proceeds.

Denied July 28, 1891.

Relators contended that no further allowance could be made than the taxable fees, under How. Stat., Sec. 9010. Respondent insisted that under the general power given in said section, after the enumeration of the specified fees, the court had the authority to make the allowance, and in any event under the last paragraph of Ch. Rule 118 the court had the power.

409 FREEMAN (Admr.) vs. PROBATE JUDGE (Washtenaw), 79 M., 390.

To vacate an order granting an allowance to a widow under the statute (How., Sec. 5842).

Denied January 3, 1890.

Held, (1) that an administrator is entitled to notice of the application of a widow for an allowance for her support pending the settlement of the estate, under the statute, and to be heard upon such allowance, and an order made without such notice is void, but it appeared that, upon the protest of relator, all proceedings under the first order, which was made without notice, were abandoned and a petition filed and relator cited to appear; (2) that no formal or sworn petition is required to be presented by a widow to the probate judge to obtain an order for an allowance for her support under the statutes; (3) that such orders are in the discretion of the probate judge, who may modify or rescind them at any time, and appellate courts will not interfere, except where there has been an abuse of discretion.

410 CURTIS vs. PROBATE JUDGE (Cass), 35 M., 219.

To compel respondent to proceed at once to set off to relator, a widow, her statutory allowance.

Granted October 27, 1876.

Relator having filed her application, the probate judge denied the same. On appeal his action was reversed. When the order of the Circuit Court was certified to the probate judge it became the duty of that officer to proceed at once, when applied to, to make the allowance. The reason assigned for his not doing so is, that a motion had been made in the Circuit Court to set aside its order.

Held, that this motion did not amount to a stay of proceedings.

411 PULLING vs. PROBATE JUDGE (Wayne), No. 11663, 85 M., 34.

To compel respondent to make an order granting an allowance to relator out of the estate of her deceased husband, pending the settlement of her estate, the same having been refused because of an ante-nuptial agreement by which it was claimed that relator had relinquished her right to an allowance.

Granted February 27, 1891, with costs.

412 PULLING vs. PROBATE JUDGE (Wayne), No. 12352, 88 M., 387.

To compel respondent to make a further allowance to relator out of the estate of her deceased husband, and to set aside an order assigning the estate, out of which such allowance should be paid, to the devisees, in the absence of any testimony tending to show the then present needs and circumstances of the relator.

Denied November 18, 1891, with costs.

413 BACON vs. PROBATE JUDGE (Kent), No. 14118, 100 M., 183.
(Certiorari to Kent.)

To compel respondent to set aside an order for allowance to a widow, on the ground that no legal notice was given to the administrator of the application, and that the amount of the allowance was an abuse of discretion. The circuit judge denied the writ.

Affirmed May 4, 1894, with costs.

It appeared that no written notice was given, but that the administrator, in response to an oral notice of the application, appeared and furnished the information upon which the order was based.

Held, that there is no statute requiring written notice to be given, and that the court acquired jurisdiction by the appearance of the administrator. Held, further, that it did not appear that there was any abuse of discretion in making the allowance. Freeman vs. Probate Judge, 79 M., 390 (409); North vs. Probate Judge, 84 M., 69; In re Power Estate, 92 M., 106; Pulling vs. Probate Judge, 88 M., 387 (412).

414 CORBY vs. PROBATE JUDGE (Wayne), No. 13454, 96 M., 11.

To compel respondent to vacate an order entered May 21, 1872, admitting a will to probate, on the ground that the testator, at the time that the will is alleged to have been executed, was insane and incompetent, and that relator had no knowledge of its probate, or the application therefor, and further, that the proofs on file do not show the proper publication of the notice of the application for probate.

Denied June 1, 1893, with costs.

Held, that the Probate Court has no power to vacate the order, and that mandamus will not lie where the person to whom it is addressed has no power to obey its mandate.

415 AYRES vs. CIRCUIT JUDGE (Wayne), No. 12569, 90 M., 380.

To compel respondent to dismiss a divorce bill for want of the statutory verification.

Granted March 2, 1892, with costs.

See Harrison vs. Harrison, 94 M., 559; Holcomb vs. Holcomb, 100 M., 421.

416 McGUIRE ET AL. vs. CIRCUIT JUDGE (Van Buren), 69 M., 593.

To compel respondent to vacate an order entered by complainant dismissing his bill, in a case where relators, defendants in a chancery case, had answered claiming affirmative relief.

Denied April 24, 1888.

Held, that Chancery Rule No. 123, which authorizes the defendant by his answer to present the facts upon which his equity rests, does not relieve him from stating such facts with the same particularity and certainty as if he had resorted to a cross-bill under the former practice; that when the matter set up is simply a matter of defense it is disposed of by the dismissal of the original bill, and that where a bill is filed by one in actual possession to quiet title to lands, a cross-bill will not lie for the purpose of obtaining possession.

417 CAMERON vs. CIRCUIT JUDGE (Wayne), No. 11990½.

To compel vacation of order confirming sale and make an order of reference.

Order to show cause denied May 19, 1891.

Bill for foreclosure. Defendants appeared and received a copy of the bill, but did not answer, and their default was entered. They afterwards objected to the confirmation of the sale for want of notice of subsequent proceedings.

418 TISDALE ET AL. (Receivers) vs. CIRCUIT JUDGE (Wayne), No. 11722.

To compel the circuit judge to vacate an order granting leave to bring replevin against receiver.

Denied January 14, 1891, with costs.

The bill was filed November 28, 1890, by creditors, secured by chattel mortgage, against the mortgagors, and on the same day the solicitors for both mortgagors appeared before the court, and consented to the appointment of receivers, the court stating that such appointment was made with the understanding that it should in no way operate to the prejudice of unsecured creditors, and was not to be used to impound the property or to prevent third parties from obtaining orders granting leave to bring such actions as the court might deem such parties entitled to institute.

The contention of relators was, that it appeared from the petition that the plaintiff in the replevin suit was not entitled to bring the action.

419 TOWNSEND ET AL. vs. CIRCUIT JUDGE (Cass), 39 M., 407.

To vacate orders requiring a garnishee to surrender to a receiver certain notes, left with him for collection by one of the principal defendants, and to pay the receiver all sums actually collected thereon, where the garnishee disclosure does not show that the notes belonged to the defendants or either of them.

Granted October 22, 1878.

420 CITIZENS' COMMERCIAL & SAVINGS BANK vs. CIRCUIT JUDGE (Bay), No. 15694; 68 N. W., 649; 3 D. L. N., 520.

To vacate an order setting aside an order granting leave to garnish a receiver.

Denied October 20, 1896, with costs.

Held, that the court, in its discretion, could grant leave, and when, in its judgment, leave was improvidently granted, it might vacate the order granting leave.

421 BLACKMORE vs. PROBATE JUDGE (Kent), No. 13375, 95 M., 446.

To compel respondent to grant leave to bring suit upon a residuary legatee's bond for a claim based upon certain notes given by the testator in his lifetime, which claim had not been presented to the commissioners of said estate, proved or allowed.

Denied April 28 1893, with costs.

422 CLARK ET AL. vs. CIRCUIT JUDGE (Huron), 40 M., 166.

To vacate an order made by the circuit judge at chambers, ex parte, granting leave to file a bill of review.

Granted January 14, 1879.

423 O'CONNOR ET AL. vs. CIRCUIT JUDGE (Monroe), No. 16332½.

To vacate an order granting leave to file a bill of review in the matter of the petition of the State of Michigan, for the sale of lands for taxes assessed for the year 1892 and previous.

Order to show cause denied June 7, 1897.

The decree was granted November 20, 1894; the sale was made in December, 1894, and O'Connor became the purchaser. Notice of the application for leave was served upon him and he was heard in opposition. The auditor general is a party hereto.

As to whether mandamus is the proper remedy relators insist that an order granting leave to file such bill is not appealable; that the power of the court in such cases is largely discretionary, and that mandamus is the proper remedy when the court has abused this discretion, citing *Stockley vs. Stockley*, 93 M., 313; *Gray vs. Barton et al.*, 62 M., 186 (858); *Maxfield vs. Freeman*, 39 M., 64; *Beecher vs. Rolling Mill Co.*, 40 M., 307; *Miller vs. Circuit Judge (Bay)*, 41 M., 326 (116).

424 CAMPAU vs. PROBATE JUDGE (St. Joseph), 36 M., 500.

Mandamus will not lie to review the refusal of a Probate Court to grant letters of administration.

Denied June 6, 1877.

But see Palms vs. Circuit Judge (Wayne), 39 M., 302 (617).

425 BUCHOZ (Admr.) vs. PRAY, 37 M., 512.

Mandamus lies to compel the commissioners of an estate to return evidence into the Probate Court, where the law requires it. Costs of mandamus directed to a tribunal usually stand against the party benefited by the action complained of.

426 JOHN HANCOCK MUTUAL LIFE INS. CO. vs. PROBATE JUDGE (Wayne), No. 13554½, 97 M., 613.

To compel the allowance of a contingent claim against an estate in a case where decedent was surety upon a bond, and judgment against the principal had since been recovered.

Order to show cause denied May 31, 1893, on the ground that relator's remedy is by appeal.

427 U. S. DISTRICT ATTORNEY vs. PROBATE JUDGE (Monroe), 16 M., 203.

To compel respondent to extend the time for creditors to present their claims.

Denied November 1, 1867.

Held, that it being a matter within the discretion of the judge of probate, mandamus does not lie.

428 BARNES vs. PROBATE JUDGE (Wayne), No. 12295.

To compel entry of order reviving commission on claims in a case where the estate was not finally settled, and claimant had

been in England ever since the death. How. Stat., Sec. 5894; Hart vs. Circuit Judge, 56 M., 592 (430).

Granted October 29, 1891, with costs against estate.

429 DOWLING vs. PROBATE JUDGE (Wayne), No. 12745½.

To vacate order setting aside the report of commissioners on claims and revoking the commission, the court having found that the administrator of said estate did not have actual notice of the meeting of said commissioners, and that the commissioners did not give notice of their meeting as required by law and directed by the court.

Order to show cause denied May 4, 1892.

430 HART ET AL. vs. CIRCUIT JUDGE (Shiawassee), 56 M., 592.

To compel the hearing of a claim made by a creditor against an estate, where he had failed to present it to the commissioners while in commission, on appeal to the Circuit Court from the order refusing to hear the application.

Granted May 6, 1885.

Held, that under Secs. 5893-5895 the probate judge must either revive the commission for hearing the claim or he may hear it himself; that mandamus lies to enforce this right, and that the merits of the claim are not open upon application for mandamus.

431 DAY vs. CIRCUIT JUDGE (Wayne), No. 13839.

To compel respondent to vacate an order directing the payment of certain sums as solicitor's fees, temporary alimony, etc., in a divorce case, wherein relator is defendant, and to set aside an order committing relator for contempt in refusing to comply with the first named order.

Denied December 15, 1893, with costs.

432 WARD vs. CIRCUIT JUDGE (Macomb), No. 15338½.

To vacate an order allowing temporary alimony and expenses in a divorce proceeding.

Order to show cause denied January 14, 1896, as within the discretion of the Circuit Court.

433 LEONARD vs. CIRCUIT JUDGE (Kent), No. 13643½.

To compel respondent to grant to relator temporary alimony and expenses in a proceeding instituted by the guardian of the husband to annul his marriage with relator.

Order to show cause denied July 26, 1893.

434 ROBINSON (Guardian, etc.) vs. RECORDERS' COURT JUDGE (Detroit), 2 cases, Nos. 13257 and 13258; 94 M., 471-473; 20 L. R. A., 57.

To compel the entry of an order for the payment of witness fees to persons committed to jail on failure to recognize.

Granted January 19, 1893, without costs.

435 LOCKE (Admr.) vs. CIRCUIT JUDGE (Wayne), 62 M., 408.

To compel respondent to consider the claim of a coroner for fees and expenses incident to an inquest upon a view of the dead body of a stranger under How. Stat., Secs. 9593-9597.

Granted July 15, 1886.

436 MATTSON vs. CIRCUIT JUDGE (Ontonagon), No. 15414½.

To compel the allowance of witness fees (for plaintiff's attendance) on a continuance, at defendant's request, of a cause commenced for plaintiff's personal labor.

Order to show cause denied February 18, 1896.

437 LANSING LUMBER COMPANY vs. CIRCUIT JUDGE (Ingham),
No. 15338; 2 D. L. N., 845; 66 N. W., 41.

To vacate an order closing proofs in a case where an order had been entered March 18, 1895, providing for the taking of proofs within sixty days. At the expiration of that time another like order was entered. Complainant commenced to take proofs in June and concluded July 9, when the further taking of proofs was postponed until July 31 and again until August 6, when upon application by defendants a further extension of time was granted by the circuit court commissioner. Complainant thereupon entered an order closing proofs, which the Circuit Court refused to vacate.

Granted, without costs, February 7, 1896.

438 MEYER ET AL. vs. CIRCUIT JUDGE (Washtenaw), No. 15238½.

To vacate an order permitting complainant to file replication to an answer, and allowing proofs to be taken in open court after time fixed by rules had passed and case had been noticed for hearing on bill and answer.

Denied November 19, 1895.

439 WAGER ET AL. vs. CIRCUIT JUDGE (Osceola), No. 13387½.

To vacate order allowing further proofs to be taken in a chancery cause, after the same had been submitted, on the ground of the insufficiency of the showing made therefor.

Order to show cause denied April 4, 1893.

440 SMITH vs. CIRCUIT JUDGE (Ionia), 39 M., 122.

To compel respondent to enter an order requiring a commissioner to return proofs taken before him, which the com-

missioner withheld because complainant had not paid the expenses of the cross-examination.

Granted June 19, 1878.

441 GROW ET AL. vs. CIRCUIT JUDGE (Bay), No. 14137.

To compel the vacation of an order requiring relators, at the instance of creditors who had brought suit, to produce and deposit with the clerk of the court, for inspection by the attorneys for the creditors, defendants' books of account.

Granted June 2, 1894, with costs.

442 CUMMER ET AL. vs. CIRCUIT JUDGE (Kent), 38 M., 351.

To vacate an order of discovery, compelling the production of a party's business books.

Granted February 1, 1879.

443 PETRIE vs. CIRCUIT JUDGE (Muskegon), No. 12539, 90 M., 265.

To require respondent to make an order for the production of certain books, in which the transactions, respecting which an accounting had been ordered, were entered.

Granted February 10, 1892, with costs.

444 GERMANIA FIRE INSURANCE COMPANY vs. CIRCUIT JUDGE (Newaygo), 41 M., 258.

To vacate an order requiring the relator in a suit by it, brought upon a bond given by an agent, against said agent and the sureties, to produce certain papers to enable the defendants to prepare for their defense.

Denied July 1, 1879.

445 ROUSE, HAZARD & CO. vs. CIRCUIT JUDGE (Wayne), No. 14264, 104 M., 234.

To compel respondent to enter an order in a case pending, where relator is plaintiff and the Detroit Cycle Company, Limited, is defendant, compelling defendant and its members, Robinson, Mathewson and Holmes, to produce the books of said Detroit Cycle Company, especially its subscription book, and to receive such other evidence as may be offered by relator concerning the amount of capital stock remaining unpaid upon the subscriptions thereto, and to cause execution to issue against said members for the amount unpaid.

Granted February 26, 1895, with costs against Robinson, Mathewson and Holmes.

446 MANLY (Admr.) vs. PROBATE JUDGE (Washtenaw), No. 13606, 99 M., 441.

To compel the executors of an estate who had been cited in under How. Stat., Sec. 5876, and who had answered and produced books and papers, to make, at their own expense, certain schedules desired by relators, from said books and papers, and attach same to interrogatories propounded.

Denied March 27 1894, with costs.

447 FLETCHER vs. CIRCUIT JUDGE (Wayne), No. 14449.

To compel respondent to vacate an order allowing proofs to be taken in open court, in a chancery case, where the court found that although no notice had been given therefor, a stipulation in writing had been afterwards entered into, that at the hearing the testimony might be taken; that the stipulation had been lost and that the solicitors entering into the same had authority to so stipulate.

Denied October 30, 1894, with costs.

448 CHANDLER ET AL. vs. CIRCUIT JUDGE (Antrim), No. 13500½, 97 M., 621.

To vacate an order overruling a motion to suppress certain testimony taken before a circuit court commissioner, on the ground that the notice of taking same was insufficient.

Order to show cause denied June 13, 1893.

The case had been remanded by the Supreme Court (Drayton vs. Chandler, 93 M., 383), and the circuit judge had made an order directing the testimony to be taken on four days' notice to relator. The notice was served by mail April 3, for April 8, and was received by relator's solicitors at their residence, which was less than twenty miles from the point where the notice was mailed.

449 MULHERN vs. CIRCUIT JUDGE (Kent), No. 15903; 3 D. I. N., 769; 70 N. W., 15.

To vacate an order dismissing proceedings for the taking of defendant's testimony, in a suit in which relator is plaintiff, under Act No. 181, Laws of 1895.

Denied February 2, 1897, with costs.

Before filing the declaration relator had given a notice to which was attached an affidavit, stating that discovery was sought to enable plaintiff to plead. Defendant moved to dismiss; an order was entered staying proceedings, but pending decision plaintiff filed her declaration, and, after issue joined, made a second attempt to bring defendant before a circuit court commissioner.

The court dismissed the proceedings under both applications.

Respondent insisted (1) that the title to the act provides for proceedings for discovery and for the examination of parties to such proceedings; that the title limits the discovery to cases where the discovery might have been obtained in equity, but the body of the act provides for the compulsory examination of an adverse party, although no necessity exists for discovery, and the act is therefore unconstitutional. *Edwards vs. Wakefield*, 6 Ell. & Bl., 461; *Pye vs. Butterfield*, 5 Best. & Smith, 828-836; *Glenny vs. Stedwell*, 64 N. Y.,

120-123; *In re Hauck*, 70 M., 396; *People vs. Gadway*, 61 M., 285; *Stewart vs. F. M. Soc.*, 41 M., 67; *People vs. Congdon*, 77 M., 351; *Eaton vs. Walker*, 76 M., 579; *N. W. Mnfg. Co. vs. Circuit Judge*, 58 M., 381 (618). (2) That the proceedings here instituted are not proceedings for discovery and no attempt is made to show their necessity; that the right to discovery from an adversary is confined to such matters as are material, and does not extend to matters in support of the other party's case; *Wilson vs. Webber*, 2 Gray, 558; *Pepiatt vs. Smith*, 3 Hurlst & Colt, 129; *Edwards vs. Wakefield*, 6 Ell. & Bl., 461; *Bird vs. Kreiser*, 27 N. Y., 425; that a "fishing bill" could not be maintained under the former practice, *Jenkins vs. Putnam*, 106 N. Y., 272; that an examination will not be allowed where the real purpose is to ascertain whether any cause of action really exists in plaintiff's behalf against defendant, *Churchman vs. Merritt*, 51 Hun., 375; *Green vs. Cary*, 81 Hun. 496; *Britton vs. McDonald*, 23 N. Y. S., 350; *Byrnes vs. Laden*, 36 N. Y. S., 1048; *Morris vs. Parr*, 6 Best & S., 201.

450 BROWN vs. CIRCUIT JUDGE (Clinton), No. 15663½.

To vacate an order made in a suit commenced by declaration upon the application of a plaintiff, under the provisions of Act No. 181, Laws of 1895, before issue joined in the principal suit, but after the disclosure of the garnishee had been filed and excepted to, and the garnishee defendant had been notified to appear before the circuit judge and submit to an examination, requiring relator, who is the principal defendant, to appear before the circuit judge at chambers at a time and place named, to give evidence as to the material issues in the principal garnishee suits.

Order to show cause denied June 17, 1896.

Relator insisted that inasmuch as issue was not joined in the principal suit, and the application did not set forth that the purpose of the examination was "to enable the party to plead," the court was without jurisdiction to make the order complained of.

**451 MUSKEGON BOOMING CO. vs. CIRCUIT JUDGE (Muskegon),
No. 13561½, 97 M., 622.**

To vacate an order directing a commission to issue to take the deposition of a resident for use upon a motion for a new trial, in a case where the witness had refused to make an affidavit.

Order to show cause denied June 13, 1893.

Relator contended that How., Sec. 7766, had no application to motions for a new trial.

452 TORRENT ET AL vs. CIRCUIT JUDGE (Muskegon), No. 13653.

To compel respondent to issue a commission to take the testimony of witnesses to be used on a pending application, for re-taxation of costs, the Circuit Court having refused the application on the authority of *Sherman vs. Circuit Judge*, 52 M., 474 (579).

Denied January 31, 1894, with costs.

453 CONVERSE vs. CIRCUIT JUDGE (Wayne), No. 13491½.

To compel respondent to vacate an order allowing a commission to take testimony, to issue under Sec. 7433, How. Stat., on the ground that the affidavit therefor was made by an attorney and does not state why it was not made by the party.

Order to show cause denied April 25, 1893.

**454 CHICAGO RUBBER COMPANY vs. CIRCUIT JUDGE (Branch),
No. 11725½**

To vacate an order striking a deposition from the files, in a case where there was testimony tending to show that the deposition was taken by one member of a law firm, another member

appearing for the party in whose behalf the deposition was taken.

Order to show cause denied February 10, 1891.

455 TAYLOR vs. CIRCUIT JUDGE (Osceola), 30 M., 98.

To vacate an order setting aside a reference, where, upon the motion, it appeared that the order of reference had been made by respondent's predecessor, and it was a disputed point between the parties whether the reference was by consent or upon the judge's own motion and against defendant's objection, and upon the hearing before the referee, the defendant had not appeared, except to object thereto on the ground that the case was not a proper one for reference.

Denied July 21, 1874, on the ground that the setting aside of a reference upon cause shown is such interlocutory action as is within the legitimate discretion of the circuit judge and will not be review on mandamus.

456 WILES vs. CIRCUIT JUDGE (Gratiot), No. 14837½.

To vacate an order discharging an order of reference to a commissioner, for taking account of equitable assets, income, etc., and appointing a receiver, in case of a judgment creditor's bill filed, it appearing that one of the defendants had received no legal notice of such application.

Order to show cause denied June 18, 1895.

457 McCREERY vs. CIRCUIT JUDGE (Bay), No. 13092, 93 M., 463.

To compel discovery in a judgment creditor's suit.

Denied November 18, 1892, with costs.

The decision in *Riopelle vs. Doellner*, 26 M., 102, and in *Sheldon vs. Walbridge*, 44 Id., 251, that since parties have

become general witnesses under our statutes, a bill of discovery will not lie, where the facts sought to be discovered are within the knowledge of any witness, applies to a bill of discovery in aid of a suit at law.

The statute making parties competent witnesses did not repeal the statutory provisions (How. Stat., Secs. 6614, 6615, 6617, 8168, 8169) giving the Chancery Court power to compel a discovery in suits by judgment creditors to enforce their judgments; citing *Hubbard vs. McNaughton*, 43 M., 220; *Turnbull vs. Lumber Co.*, 55 Id., 387.

A complainant is not entitled to file exceptions to the voluntary answer of a corporation officer to a judgment creditor's bill, especially when the answer contains an express denial of the charges made in the bill.

458 BERLES vs. CIRCUIT COURT COMMISSIONER (Kent), No. 14315, 104 M., 129. (Certiorari to Kent.)

To compel respondent to set aside an order requiring relator to appear before him and submit to an examination concerning his property. The circuit judge denied the writ.

Affirmed February 12, 1895, with costs.

Judgment had been rendered in the Circuit Court for the County of Kent against relator. Execution was issued thereon, and returned nulla bona. Plaintiff thereupon presented an affidavit for the examination of relator under oath, under How. Stat., Sec. 8107.

459 LEE ET AL. vs. CIRCUIT JUDGE (Kalamazoo), No. 14231, 101 M., 406.

To compel the entry of an order requiring certain judgment debtors to appear at a time and place named, and make discovery, on oath, concerning their property and debts, under chapter 278 How. Stat.

Granted July 10, 1894, with costs against the judgment debtors.

Respondent contended that said chapter is invalid because, (1) it does not provide for the framing of an issue; (2) the statute is otherwise crude and imperfect; (3) because the statute does not provide for a trial by jury; (4) because its object has been superceded by the subsequent statutes and repealed by implication; (5) because while it attempts to provide a remedy at law in lieu of a proceeding in chancery, it is wanting in means to accomplish its object; (6) because by Act. No. 125, Laws of 1861, parties were made competent witnesses, and the necessity for such proceeding ceased; (7) because the allegations in the petition are subject to the criticism made in *Prescott vs. Peiffer*, 57 M., 21; and (8) under our practice, where the distinction between law and equity proceedings prevails, no such statute can be maintained, and the decisions under the code practice have no force. Citing *Reed vs. Baker*, 42 M., 272; *Ehlers vs. Stoeckle*, 37 M., 260; *Risser vs. Hoyt*, 53 M., 185; *Brown vs. Circuit Judge*, 75 M., 274 (723); *Riopelle vs. Doellner*, 26 M., 102; *Sheldon vs. Walbridge*, 44 M., 251.

Relator cited, *Ex parte*, 105 U. S., 647, and urged that a statute unconstitutional or inoperative or invalid in part, may be held valid as to other provisions. Citing *Brooks vs. Hill*, 1 M., 118; *Smith vs. Adrian*, *Ibid.*, 495; *Ames vs. Port Huron*, 6 M., 266; *People vs. Mahaney*, 13 M., 481; *Campau vs. Detroit*, 14 M., 276; *People vs. Richmond*, 59 M., 570; *Attorney General vs. Amos*, 60 M., 372; *Robison vs. Miner* (Police Justice), 68 M., 549 (239).

460 ROSENTHAL vs. CIRCUIT JUDGE (Muskegon), No. 13860; 98 M., 208; 22 L. R. A., 693.

To compel respondent to enter an order restraining the use of certain evidence obtained by a plaintiff from books of account, cancelled checks, trial balances, and other books and papers of the defendant, which were taken under a writ of attachment and copies therefrom made, after which the books, etc., were returned and the attachment proceedings discontinued.

Granted December 22d, 1893, with costs.

461 KABAT ET AL. vs. CIRCUIT JUDGE (Bay), No. 16141.

To require respondent to admit relators, who are charged with contempt in the violation of an injunction, to bail.

Denied March 9, 1897.

It appeared that on the day upon which the petition herein was filed, respondent had discharged one of the relators and continued the case of another, admitting him to bail, and on the next day the other relator was found guilty, sentenced to pay a fine and stand committed for five months and until the fine was paid, but not exceeding six months in all.

462 MICHIGAN WASHING MACHINE COMPANY vs. CIRCUIT JUDGE (Kent), No. 11963½.

To compel respondent to issue an attachment against a witness for contempt.

Order to show cause denied May 5, 1891.

One Glidden was the patentee of a certain machine used by relator, and was instrumental in organizing the corporation. In consideration of certain stock he entered into an agreement to assign to relator his invention and all improvements he might thereafter make during his connection with the company. After that connection had ceased, Glidden applied for letters patent on certain improvements, and relator filed a bill to compel an assignment of the patent of such improvements, claiming that the improvement was made before he had severed his connection with the company.

Testimony was being taken before a commissioner, and Glidden refused to answer certain questions relating to the alleged new device, and the respondent refused to compel the witness to disclose the nature of his invention.

463 SHEPARD ET AL. vs. CIRCUIT JUDGE (Kent), No. 15505; 68 N. W., 221; 3 D. L. N., 368.

To compel respondent to proceed upon an order to show cause issued against a judgment debtor, who refused to appear before a circuit court commissioner for examination concerning his property, the respondent holding that the Circuit Court was without jurisdiction in such case.

Granted June 30, 1896, with costs against defendant.

464 ATCHISON, TOPEKA & SANTA Fe R. R. CO. vs. CIRCUIT JUDGE (Wayne), 60 M., 232.

To compel the commitment of a witness for contempt in refusing to answer certain questions.

Denied February 19, 1886.

Fletcher, residing in Detroit, filed a bill in equity in Kansas, against relator, and was summoned to appear before respondent under the statute allowing witnesses to be examined in foreign states before circuit judges and certain other officers.

He refused to answer certain questions, and the circuit judge declined to commit him, on the double ground of want of power in himself and of adequate means within the control of the court, where the suit is pending.

Held, that imprisonment as a means of coercion for civil purposes is not allowed by law until other means fail, and that the court, where the suit is pending, has ample means to enforce any conditions which it has a right to exact.

465 MONTGOMERY ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 13566.

To vacate an order adjudging relator guilty of contempt in against a witness for refusing to appear before a circuit court commissioner upon a commission issued from the Circuit Court to take testimony, to be used in a motion for a new trial.

Denied June 14, 1893, without costs.

The circuit judge held that the commissioner had no jurisdiction to examine the witness, as, at the time the commission issued, no motion for a new trial had been entered, and further, that the word "deposition" as used by the statute, required a notice by the moving party to the other party, and no such notice had been given.

**466 MONTGOMERY ET AL. vs. CIRCUIT JUDGE (Muskegon),
No. 13860½.**

To compel respondent to proceed with the hearing of a proceeding for contempt.

Order to show cause denied November 24, 1893.

The charge made was that respondent, in the contempt proceedings, had spirited away a witness, in a case heard by the respondent herein. The circuit judge had granted a new trial because of the alleged misconduct, and had in so doing criticised severely the conduct complained of. On the return of the order to show cause counsel for the party charged, moved the court that the proceeding be sent to another court for determination, or that another judge be called in, or that the hearing be deferred until respondent's successor-elect should take his seat.

The court thereupon postponed the hearing in accordance with the last suggestion.

467 BARNES ET AL. vs. CIRCUIT JUDGE (Wayne), 81 M., 374.

To vacate an order adjudging relator's guilt of contempt in a garnishment proceeding, for refusing to answer on oath interrogatories respecting the possession, transfer or other disposition of negotiable bills of exchange or promissory notes.

Denied June 10, 1890.

468 MONTGOMERY ET AL. vs. CIRCUIT JUDGE (Muskegon).
No. 14789.

To require respondent to proceed upon an order directing an attachment to issue as for contempt, under Chap. 256, How. Stat., against one Torrent, the court having refused to proceed, on the ground that the matters set forth in the several affidavits were not sufficient to authorize the making of the order for the issuing of the writ.

Granted April 18, 1895, with costs.

The affidavit set forth that pending a trial in the Circuit Court, of a suit wherein relators were plaintiffs and a corporation, in which one Torrent was a stockholder, was defendant, which was an action for the negligent destruction by sparks from a tug owned by defendant, of a quantity of lumber, Torrent's agents had induced a material witness, whom plaintiffs had subpoenaed, to leave the city and remain away for ten days and until the trial was finished; that Torrent's agents accompanied the witness out of the city and paid a certain amount of money to the witness; that the witness went to Chicago, Illinois, where Torrent's agent afterwards met him and placed him under the direction of one Lange; that after a few days Lange took the witness to Bloomington, thence, after ten days, to Indianapolis, Indiana, and thence sent witness to Nova Scotia; that said witness received \$1,160 as compensation for keeping out of the jurisdiction of the court; that said trial resulted in a verdict for said corporation; that a second trial was had and said witness was present and testified that he was the engineer on the tug at the time of the fire, and that the smoke stack was without a spark arrester, and said second trial resulted in a verdict for plaintiffs. One of the affidavits was made by one of the plaintiffs and the other by said witness.

469 LANGE vs. CIRCUIT JUDGE (Muskegon), No. 14265½.

To compel vacation of order requiring respondent, in contempt proceedings, after answer upon oath filed, to answer interrogatories and permitting further proofs to be made respecting the matters set forth in the petition upon which the order to show cause was issued.

Order to show cause denied June 26, 1894.

(For a full statement of the facts, see in re Lange, 104 M., 411.)

Relator insisted that his answer was final. U. S. vs. Dodge, 2 Gallison, U. S. C. C., 313; Ex Parte Briggs, 64 N. C., 214; Ex Parte Moore, 63 N. C., 397; In re Murdock, 2 Bland, 461; Hollingsworth vs. Duane, Wall., C. C., 77; Ex Parte Gould, 33 Pac. Rep. (Cal.), 1112; Langdon vs. Circuit Judge, 76 M., 358-366; Latimer vs. Barmore, 81 M., 592.

Respondent, in a brief anticipating the application, contended that How. Stat. Sec. 7275, was applicable, Latimer vs. Barmore, 81 M., 592; that such is the practical construction which has been given to the statute, Scott vs. Layng, 59 M., 43; Smith vs. Circuit Judge, 84 M., 564 (475).

470 HUNT vs. CIRCUIT JUDGE (Ottawa), No. 14813½.

To dismiss certain proceedings instituted for contempt, wherein relator is charged with inducing a witness to disobey a subpoena issued in a case where relator was charged with a violation of the liquor law.

Order to show cause denied April 16, 1895.

Relator's contention is that the original complaint against him did not allege that he was not a druggist; that the justice had no jurisdiction to issue the warrant; that the subpoena issued for said witness was issued without jurisdiction, as there was no legal cause in court, and the court was without jurisdiction to issue an attachment or to hold relator to bail.

471 MONTGOMERY ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 14063½, 100 M., 436.

To compel respondent to set aside an order quashing contempt proceedings, and to proceed with the hearing of the question of contempt.

Granted May 22, 1894, with costs against respondent in the contempt proceeding.

A former judge granted the order to show cause in the contempt proceedings. A motion to quash was made after his retirement, and his successor granted the motion. The question was, whether there was enough before the judge granting the order to show cause, to warrant the citation. It was suggested, that the court will not by mandamus review the decision of the trial judge in contempt proceedings.

Held, that such is the rule in any caase where the determination of the judge calls for the exercise of judgment in determining the fact; but where the question which the judge determines is, whether there is jurisdiction to proceed to try the question of fact, his ruling is open to review, and as mandamus is the only adequate remedy, it may properly be employed.

472 BALDWIN (Receiver) vs. CIRCUIT JUDGE (Wayne), No. 14136, 101 M., 119.

To compel respondent to punish as for contempt, certain officers of the Detroit Branch of the Supreme Sitting of the Order of the Iron Hall, in refusing to turn over to an ancillary receiver, appointed in this State, the assets in their hands belonging to said order.

Denied June 16, 1894, with costs.

Certain parties claimed to have obtained a lien upon the fund, and it was held, that, not being parties, their rights cannot be here litigated, and that proceedings for contempt are not appropriate for the trial of the issue involved.

473 SCHWARTZ (Controller) vs. BARRY (Police Justice, Saginaw), No. 12493, 90 M., 267.

To vacate order adjudging relator guilty of contempt and imposing fine for refusal to produce certain files and papers,

which were being examined by a committee of the Common Council, in an investigation which was pending in that body.
Granted February 10, 1892.

474 SCOTT ET AL. vs. CIRCUIT JUDGE (Wayne), 62 M., 532.

To vacate an order punishing relators for contempt, and to restrain the operation of an injunction granted against them.
Granted July 21, 1886.

Held, that the action of the court below was in excess of its jurisdiction; that in proceedings for contempt to enforce a civil remedy under How. Stat., Chap. 256, a solicitor has no authority to make admissions for his clients; that an order requiring respondents to pay into court a certain sum of money within forty days, or give bonds to produce it, or stand committed indefinitely, is vague and beyond the jurisdiction of the court; that the injunction suit, commenced by creditors and implicating the receiver without leave of court, was illegally commenced, and no showing was made justifying the issue of the injunction.

475 SMITH vs. CIRCUIT JUDGE (Wayne), No. 11803, 84 M., 564.

To vacate an order adjudging relator guilty of contempt in filing a bill in a court, other than that having jurisdiction of proceedings under an assignment for the benefit of creditors, to enjoin a sale of the assigned property, on the ground of the invalidity of the assignment.

Denied February 13, 1891, with costs.

476 LOVE ET AL. vs. CIRCUIT JUDGE (St. Clair), No. 13776, 97 M., 625.

To vacate an order adjudging relators guilty of contempt for refusing to pay costs awarded against them on continuance.

Denied November 1, 1893, with costs, on the ground that certiorari is the proper remedy.

477 STEELE vs. CIRCUIT JUDGE (Kent), No. 15564; 66 N. W., 963; 3 D. L. N., 228.

To vacate an order granting complainant, in a foreclosure proceeding in chancery, after sale, a deficiency, and the insolvency of the mortgagor, leave to bring suit at law against an indorser of the note.

Denied June 30, 1896, with costs.

478 CODD ET AL. vs. CIRCUIT JUDGE (Wayne), No. 15479; 67 N. W., 819; 3 D. L. N., 24.

To vacate an order substituting a second mortgagee, who had paid the amount of the decree in a foreclosure case, under Ch. Rule No. 125.

Denied March 31, 1896, with costs.

479 ALLEN vs. CIRCUIT JUDGE (Wayne), 57 M., 198.

To require respondent to direct the payment over to relator, as second mortgagee, of certain surplus moneys remaining over after the satisfaction of the first mortgage, and paid into court.

Denied June 3, 1885, on the ground that the petition therefor did not establish a prima facie right to such moneys.

480 ERIE SHOOTING CLUB vs. CIRCUIT JUDGE (Monroe), No. 13889.

To require respondent to certify under How. Stat., Sec. 6897, that title to lands did not come in question, in an action of trespass to certain marsh lands commenced before a justice

by relator, where defendant had given notice that the title would come in question, and the justice had certified the case to the circuit, and the sole question presented upon the trial in the circuit was, whether defendant was upon Sec. 27 (Plaintiff's land), or upon Sec. 24 (land which did not belong to plaintiff), and defendant had judgment.

Granted January 3, 1894, with costs.

481 STANGE vs. CIRCUIT JUDGE (Wayne), 22 M., 407.

To compel respondent to permit defendant and appellee to take judgment for his set-off in a case appealed from a justice of the peace, on the trial of which in the circuit, plaintiff (appellant) did not appear.

Denied April 11, 1871.

Held, that the only judgment which can be rendered in such case is one of non-suit or of discontinuance.

482 WELLS ET AL. vs. CIRCUIT JUDGE (St. Joseph), 39 M., 21.

To compel respondent to allow a set-off of one judgment against another, which he refused on account of a dispute as to rights of attorney and assignee.

Denied June 11, 1879.

Held, that mandamus does not lie to review the discretion of a circuit judge; that his denial of the motion was not a bar to proceedings in equity.

483 ALDRICH vs. CIRCUIT JUDGE (Wayne), No. 15874; 3 D. L. N., 779; 69 N. W., 1108.

To vacate an order granting a writ of assistance in a foreclosure suit.

Denied February 2, 1897.

The granting of the writ was opposed by the solicitor for the mortgagor, who made an oral claim of possession under leases issued by the city upon tax sales.

Held, (1) that if the order entered is an improper one, appeal, and not mandamus, is the proper remedy; (2) that the objection raised should have been presented to the court in a more formal manner than by an oral claim.

484 LONG vs. CIRCUIT JUDGE (Wayne), No. 15231.

To compel respondent to grant a writ of assistance after sale upon chancery foreclosure.

Order to show cause issued November 19, 1895.

Bill filed October 27, 1893. Pro confesso entered for want of appearance. Order of reference for computation March 16, 1884. April 16, 1894, defendants paid, and complainant accepted, interest due to March 1, 1894. Nothing further was done until April 20, 1895, when, over one year's interest having accrued, a new order of reference was obtained, amount due reported April 20, 1895, decree taken April 30. Sale made July 2, 1895. Sale confirmed October 8, and petition for writ of assistance filed October 20. Defendants resisted on the ground that no notice was given them of the petition for the second order of reference.

**485 BUCHANAN vs. MOORE (Circuit Court Commissioner), No. 15924,
4 D. L. N., 393.**

Certiorari to St. Clair.

To compel respondent to issue a writ of restitution in favor of relator.

After the filing of the petition for the writ of certiorari, the proceedings were dismissed upon stipulation of the parties in interest.

486 HOLTON vs. CIRCUIT JUDGE (Gratiot), No. 16048.

To vacate an order entered in a divorce cause, after notice of appeal given and bond filed by complainant, requiring the defendant to pay to the register "the sum of \$142.20, to be used by such register in procuring a transcript of the stenographer's minutes, to be filed in this cause to be used by the court in the settlement of this case, and in perfecting an appeal herein, such being the estimated cost of procuring such transcript."

Granted February 9, 1897.

487 DERBY ET AL. vs. CIRCUIT JUDGE (Saginaw), 60 M., 1.

To require the respondent to issue a distringas to enforce the collection of costs awarded in proceedings by a railroad company to condemn land for a right of way.

Denied February 10, 1886.

Held, that the remedy provided by statute for such proceeding is exclusive, and that the failure to pay the expenses, costs and counsel fees awarded, within sixty days after confirmation of the report of the jury, is a waiver and abandonment of such proceeding.

488 CRIBBEN ET AL. vs. CIRCUIT JUDGE (St. Clair), No. 11970.

To compel respondent to enter an order allowing plaintiffs to amend the return day in a summons.

Order to show cause denied May 5, 1891.

On March 25, 1891, relator commenced suit in the St. Clair Circuit by summons, but by mistake the return day was fixed for March 14, instead of April 14, the day named in the praecipe. A writ of garnishment returnable April 14 was issued on the same day. After service, as it is alleged, and after the garnishee

had paid over the moneys in his hands, plaintiffs moved to amend.

This is the third application.

489 WOOD (Admr.) ET AL. vs. CIRCUIT JUDGE (Lenawee), No. 11666, 84 M., 521.

To compel respondent to allow an amendment substituting certain of the relators as plaintiffs, in the place of their co-relator, in a suit brought against a mutual benefit association to recover life insurance, to which they were entitled as heirs of their father, and which was brought in the name of the administrator.

Granted February 6, 1891, without costs.

490 NICOL vs. CIRCUIT JUDGE (Wayne), No. 14937½.

To compel respondent to permit an amendment to a summons, adding a party defendant after plea in abatement.

Order to show cause denied June 4, 1895.

Relator brought suit before a justice against three parties who were non-residents. On the return day plaintiff declared and defendants filed a plea in abatement setting forth that one Rardon was a joint contractor.

Plaintiff asked leave to amend, which was denied. Plaintiff took a special appeal to the Circuit and there moved to amend.

491 STRAW-ELLSWORTH MANUFACTURING COMPANY vs. CIRCUIT JUDGE (Ottawa), No. 14257½.

To permit plaintiff to file an amended affidavit in garnishment, after a motion had been made to quash the writ, because of jurisdictional defects in the original affidavit.

Order to show cause denied June 21, 1894.

**492 AMERICAN EXPRESS CO. vs. CIRCUIT JUDGE (Wayne),
No. 13888.**

To vacate an order allowing plaintiffs to amend the affidavit and writ in a replevin case and file a new bond, after the property had been taken from relator, making it a party.

Granted January 3, 1894, with costs against plaintiffs.

493 ZIMMERMAN vs. CIRCUIT JUDGE (Saginaw), No. 14724½.

To vacate an order allowing the defendant, a foreign insurance company, upon the trial of the cause, to file an affidavit denying the execution of the policy sued upon.

Order denied May 7, 1895.

**493½ PORTSMOUTH SAVINGS BANK vs. CIRCUIT JUDGE (Gratiot),
83 M., 646.**

To compel respondent to vacate an order granting a defendant leave to amend its plea by adding an affidavit, denying the execution of certain bonds sued upon.

Denied December 24, 1890.

Held, (1) that the allowance of an amendment, as in the nature of one to cover proofs, is within the discretion of the trial judge; (2) that only the trial judge to whom the case has been submitted for decision can properly hear and pass upon such a motion, and (3) that such motion is properly heard by the circuit judge before whom the suit was tried, though at the time of the entry of the motion the county in which the suit was tried has been made a part of another judicial circuit. See No. 890.

494 BERKERY vs. CIRCUIT JUDGE (Wayne), 82 M., 160.

To vacate an order allowing the filing of new affidavits, nunc pro tunc, in place of defective ones filed under the statute pro-

viding for filing transcripts of justices' judgments with the county clerk.

Granted August 1, 1890.

Held, (1) that where the required affidavit in such case is defective, the Circuit Court has no power to allow sufficient ones to be filed nunc pro tunc; (2) that the authority of the attorney who appears in the Justice Court extends no further than the proceeding before the justice; (3) that the affidavits required to be filed with the justice may be made by any duly authorized attorney who may swear to his authority in said affidavit; (4) that where the affidavit filed with the justice fails to show that any costs are due, the county clerk has no authority to enter such costs as a part of the judgment docketed in his office; (5) that where eleven days intervene between the making of the affidavit for the transcript and the filing of such transcript with the county clerk, another affidavit of the amount due is necessary to authorize such filing, and (6) that the official character of a notary in another State, before whom the affidavit of amount due is sworn to, must be certified as required by How. Stat., Sec. 7448.

495 MICHIGAN CENTRAL RAILWAY COMPANY vs. CIRCUIT JUDGE (Kalamazoo), 35 M., 227.

To set aside an order allowing an amendment to a declaration and to strike the amended declaration from the files.

Granted October 25, 1876.

The original declaration charged the railway company as a common carrier, for the loss of goods shipped over its lines and destroyed by fire while in its depot awaiting delivery to a subsequent carrier, and the amendment sought to charge the company for negligence as warehousemen.

Cause of action had become barred by the statute of limitations prior to the amendment.

496 NUGENT vs. CIRCUIT JUDGE (Kent), No. 13102, 93 M., 462.

To vacate an order allowing an amendment to declaration.
Granted Nov. 18, 1892, with costs.

Held, that the amendment introduced a new cause of action after the same had become barred by the statute of limitations.

Gorman vs. Circuit Judge, 27 M., 138 (506); M. C. R. R. vs. Circuit Judge, 35 M., 227 (495).

496½ ST. CLAIR TUNNEL COMPANY vs. CIRCUIT JUDGE (St. Clair), No. 16366; 4 D. L. N., 623; 72 N. W., 249.

To compel respondent to vacate an order permitting an amendment to be made to a declaration.

Denied September 23, 1897.

Held, that mandamus will not lie to review an order of the Circuit Court allowing an amendment to a declaration.

497 STIMPSON vs. CIRCUIT JUDGE (Genesee), 41 M., 3.

To compel vacation of an order denying leave to file an amended declaration on duly suggesting of record the death of defendant.

Denied June 3, 1879.

The relator claimed that the declaration should be amended so as to show the change of parties.

Held, that the suggestion of a party's death upon the record is enough, if undisputed, to have all the proceedings construed with it without amending the declaration.

498 CONNECTICUT FIRE INS. CO. vs. CIRCUIT JUDGE (Monroe), 77 M., 231.

To vacate an order allowing an amended declaration to be filed.

Granted November 1, 1889.

Held, that a declaration in the usual form, upon an insurance policy, cannot be amended so as to claim damages for the failure of the defendant to deliver a policy in conformity to an alleged agreement, nor can it be amended so as to eliminate a guarantee on the part of the insured "that there shall be a clear space of two hundred feet between staves, headings and mill," under an allegation that the said clause was inserted either through mistake or fraud, and was never assented to by the insured.

499 KING vs. CIRCUIT JUDGE (Wayne), 41 M., 727.

To vacate an order striking an amended declaration from the files.

Denied October 22, 1879, on the ground that the discretion of a trial judge, in refusing to allow amendments to pleadings, will not be reviewed if not abused.

500 SCHUBRING vs. CIRCUIT JUDGE (Oakland), No. 13338.

To vacate an order striking amended declaration from files, and reinstate cause for hearing.

Granted April 7, 1893, without costs.

The circuit judge held, that the amended declaration introduced a new cause of action after the statute of limitations had run.

The action was trespass on the case. Plaintiff exchanged with defendant a stock of merchandise of the value of \$1,060 for a piece of land which defendant "falsely and fraudulently represented to have a cash value of \$1,500," while "in fact the land was not worth more than \$500," and in addition to the stock of goods, plaintiff gave her note for \$500, secured by mortgage upon the land conveyed to her. The mortgage was afterwards foreclosed and the land bid in by defendant for .

the amount of the mortgage. The original declaration alleged that the defendant falsely and fraudulently represented the parcel of land "to be 100 feet deep, running back to an alley in the rear thereof, with a width of 25 feet" * * * and plaintiff avers that in truth and in fact the said piece of land at the date of said exchange * * * was not 100 feet deep, but was only 50 feet deep and did not run back to an alley as aforesaid."

The amended declaration alleged that defendant "fraudulently represented to said plaintiff that the said premises had a depth of 100 feet extending back from an alley to Warren avenue, to-wit, to where Warren avenue would come when opened up," whereas "in truth and in fact the said piece of land * * * was not 100 feet deep, but was only 50 feet deep, and did not run back to Warren avenue, to-wit, to where Warren avenue would come when opened up."

501 MASSMAN ET AL. vs. CIRCUIT JUDGE (Sanilac), No. 16095.

To vacate an order denying defendants' motion to strike an amended declaration from the files, in an action against a saloon-keeper and his bondsmen, under 3 How. Stat., Sec. 2283, E. 3.

Denied, with costs, May 1, 1897.

In the original declaration plaintiff (the widow) declared as administratrix. The amended declaration named plaintiff personally and counted upon injuries to her means of support.

It seems that defendants' counsel, in consideration of a continuance, stipulated that a "new declaration" might be filed.

502 SWARTHOUT ET AL. vs. CIRCUIT JUDGE (Jackson), No. 16276.

To vacate an order granting leave to amend a declaration. Denied, with costs, May 5, 1897.

Suit commenced in Justice Court, upon an oral declaration

upon all the common counts. Defendants did not appear and appealed from the judgment.

After the case had been pending in the Circuit Court for nine months, plaintiffs were allowed to amend, showing that the claim originated in favor of plaintiff's assignors.

503 ABBOT vs. CIRCUIT JUDGE (Wayne), 55 M., 410.

To vacate an order allowing an amendment to a declaration on the bond of a residuary legatee.

Denied January 6, 1885.

The original declaration alleged as a breach the failure to pay a claim which had been allowed in plaintiff's favor by the probate judge. The amended narr alleged, as the breach, the failure to pay a note (more than six years then overdue) held by plaintiff, and which constituted the claim which had been allowed.

Held, that the amendment did not introduce a new cause of action.

504 LONG vs. CIRCUIT JUDGE (Wayne), 27 M., 163.

To vacate an order granting leave to file an amended declaration.

Denied April 22, 1873.

A declaration for false imprisonment had been amended by adding a count for malicious prosecution.

505 SMITH vs. CIRCUIT JUDGE (Wayne), 27 M., 86.

To vacate an order setting aside a declaration for breach of covenant, filed in an action commenced by summons in a plea of trespass on the case.

Granted April 16, 1873.

506 GORMAN ET AL. vs. CIRCUIT JUDGE (Newaygo), 27 M., 138

To compel the circuit judge to grant an order striking from the files an amended declaration, which introduces a new and separate cause of action, which is barred by the statute of limitations.

Granted April 22, 1873.

507 HENSLER vs. CIRCUIT JUDGE (Wayne), 13 M., 205.

To compel respondent to strike from the files and records of a case, an amended declaration, changing the form of action from trover to assumpsit.

Granted April 26, 1865.

508 STRANG ET AL. vs. CIRCUIT JUDGE (Branch), No. 15236; 2 D. L. N., 821; 65 N. W., 939.

To vacate an order permitting the filing of an amended declaration in an action for the recovery of the value of personal property alleged to have been fraudulently obtained from plaintiff by relators.

Denied January 28, 1896, with costs.

The fraud charged in the original declaration was that the defendants did not have title to the patent right which they sold to plaintiffs, while in the amended declaration it was that the defendant did not transfer to plaintiff the patent right shown and bargained for.

509 JENSEN vs. CIRCUIT JUDGE (Ionia), No. 14228.

To strike amended declaration from files.

Denied June 28, 1894, with costs.

Plaintiff brought assumpsit against relator for the value of certain property which it was claimed that defendant had converted.

Upon the trial defendant, after plaintiff's counsel had made his opening, objected that inasmuch as no claim was made that the property had been converted into money, assumpsit would not lie.

The circuit judge intimated that he would so hold, whereupon plaintiff asked leave to submit to a non-suit. Such leave was granted, and by consent, plaintiff moved to set aside the non-suit and for leave to file a declaration in trover.

Granted upon payment of costs taxed, including an attorney fee of \$15.

Plaintiff filed the amended narr and paid the taxed costs.

510 POWERS ET AL. vs. CIRCUIT JUDGE (Kent), 30 M., 386.

To compel respondent to strike from the files an amended declaration.

Denied October 21, 1874.

Action for injury, caused by the obstruction of a river by a dam, to lumber manufactured by plaintiffs at their mill above the obstruction, and the amendment referred also to lumber and timber purchased by plaintiffs as well as that manufactured by them.

511 DREW vs. CIRCUIT JUDGE (Washtenaw), 1 Doug., 434.

To compel respondent to strike from the files an amended declaration which introduced a new cause of action.

Granted, 1844.

Held, (1) that the motion to strike from the files and the decision of the Circuit Court thereon, would constitute no part of a common law record of the case, and that mandamus is the proper remedy in such a case to obtain a reversal of the decision; (2) that after an amended declaration has been filed by leave of court and demurred to, plaintiffs could not file a

second amended declaration as of course, but must obtain leave of court; (3) that the original and also the first amended declaration were in debt, to recover the penalty for usury under the statute, while the last added three counts for money had and received, introducing a new cause of action, and (4) that an action founded upon a statute cannot be joined with an action at common law.

512 COMSTOCK vs. CIRCUIT JUDGE (Mecosta), No. 11720.

To compel the circuit judge to strike an amended declaration from the files, on the ground that the amendment introduced a new cause of action, and that the statute of limitations had run before the allowance of the amendment.

Denied February 4, 1891, with costs.

The action was for negligent injury received March 2, 1882, and was commenced by summons, issued August 1, 1888, and served on that day. Prior to that time, however, the defendant had removed to the State of Wisconsin, and had resided there for two years and five months. The declaration was filed November 2, 1888, to which defendant pleaded the general issue, with notice of the statute of limitations. In March, 1890, plaintiff moved to amend the declaration, and the court, on April 2, granted such leave. On April 9, 1890, defendant moved to strike the amended declaration from the files, on the ground that the amended declaration counted upon a new cause of action, which had become barred by the statute of limitations. Granted. Plaintiff, on May 14, 1890, again moved to amend the declaration, setting forth, by affidavit, the absence of the defendant from the State, as aforesaid, and also, that the circuit judge who had heard the previous motion was, at the time of the hearing, and determination thereof, disqualified. The facts, both as to the absence of defendant from the State, and the disqualification of the judge, were conceded. Because of the inability to procure another

judge, the matter was not finally heard and determined until Nov. 28, 1890. In the meantime the hearing had not been formally continued, but the motion had been re-noticed. The return insisted that the amendment was simply a re-statement of the same cause of action and that the statute had not run when the motion was made.

513 FLINT & PERE MARQUETTE R. R. CO. vs. CIRCUIT JUDGE (Wayne), No. 15172; 65 N. W., 583; 2 D. L. N., 809.

To vacate an order permitting the filing of an amended declaration.

Denied December 30, 1895, without costs, holding that while the original declaration was upon the common counts, two of the added counts introduced a cause of action which could not be proven under the common counts, and which was barred by the statute of limitations, yet, as the other two added counts did not introduce a new cause of action, the relator was not entitled to the order prayed for.

514 NORRIS ET AL. vs. CIRCUIT JUDGE (Kent), No. 13991, 100 M., 256.

To compel respondent to vacate an order allowing the amendment of a declaration in an action for negligent malpractice, sought to be revived against relators as executors.

Denied May 18, 1894, with costs.

The only question involved was, whether the action survived under How. Stat., Sec. 7397, and the court held that the statute applied.

515 ASHLAND IRON MINING CO. vs. CIRCUIT JUDGE (Gogebic), No. 12788½.

To compel respondent to vacate orders made in a certain suit commenced against relator, allowing an amended declara-

tion to be filed; refusing to direct that the amended declaration be stricken from the files; refusing to enter order staying proceedings until the costs of a former trial were paid, and in refusing to compel plaintiff to file security for costs.

Order to show cause denied May 4, 1892.

516 BROTHERTON IRON MINING CO vs. CIRCUIT JUDGE
(Gogebic), No. 12345.

To vacate order allowing amended declaration to be filed, to strike amended declaration from the files, to require plaintiff to pay certain costs and to file security for costs.

A judgment against relator was reversed with costs (75 M., 84). Afterwards plaintiff asked leave to file an amended narr, and leave was granted; defendant demurred to the amended declaration, which demurrer was overruled; defendant then pleaded to the amended declaration, and moved for an order staying proceedings until the costs taxed in this court should be paid and for security for further costs, both of which motions were denied. Respondent answered that he did not make the order allowing the amendment to the declaration, and had not been asked to set it aside.

Denied November 18, 1891, without costs.

517 SULLIVAN vs. CIRCUIT JUDGE (Marquette), No. 14436.

To permit relator, after appeal from report of commissioners on claims to the Circuit Court, trial there, and judgment for plaintiff, which was reversed in the Supreme Court (Sullivan vs. Ross Estate, 98 M., 570), to amend his petition so as to count upon the contract which he repudiated upon the trial had.

Denied December 19, 1894, with costs. See Sullivan vs. Estate of Ross, 4 D. L. N., 315.

518 WINGERT (Admr.) vs. CIRCUIT JUDGE (Wayne), No. 14254, 101 M., 395.

To compel respondent to permit relator to file an amended declaration, where the cause of action arose in Canada, and the amendment counted upon the Canadian statute, which provides that the action must be commenced within twelve months after the death, and when the amendment was proposed, the twelve months had expired.

Denied July 5, 1894, with costs.

Held, that the statute of limitations could not be evaded under the guise of an amendment to the declaration.

519 PRATT vs. CIRCUIT JUDGE (Montcalm), No. 14809; 105 M., 499.

To allow an amendment to a declaration, in an action for negligent injury, so as to allege the exercise of due care on plaintiff's part.

Denied May 28, 1895, with costs.

Held, that the proposed amendment did not introduce a new cause of action, but inasmuch as the circuit judge returns that his determination was reached upon consideration of other questions, we are not authorized to interfere with his discretion.

520 BURCH vs. CIRCUIT JUDGE (Montcalm), No. 14256.

To permit the filing of an amended declaration.

Denied July 10, 1894, with costs.

Plaintiff, in April, 1889, declared on the common counts, appending the following:

\$500

Fairplains, Nov. 11, 1885.

One year after date I promise to pay to Alonzo Russell or bearer the sum of five hundred dollars at the presenting of this note when due, for value received, no interest if paid when due, to be paid out of the profits of the working up Canada patent fence of A. & A. J. Russell, patented May 5, 1883, No. 16813.

No. 1, Due Nov. 11, 1886.

ALFRED STONE.

The note was indorsed as follows: "Received on the within note \$250, the above being an offset of one-half of the within note. May 7, 1888.

"A. B. DONALDSON."

"Received this 7th day of May, 1888, on the within note, \$25.

"A. B. DONALDSON."

Defendant pleaded the general issue. Plaintiff afterwards, in April, 1894, asked leave to file an amended declaration, counting specially upon the instrument; alleging assignments to Donaldson, and from Donaldson to plaintiff; that the consideration for said instrument was certain valuable rights in a patent; that defendant had realized large profits from said patent, etc.

Leave was denied on the ground that the original declaration did not state a cause of action, and that the allowance of the amendment permitted the introduction of a cause of action now barred by the statute of limitations.

Relator contended that the commencement of suit was a demand for payment within the terms of the paper; that the motion to amend was made within six years after such demand; that the time when the paper became due was indefinite and uncertain, and could not be determined except by extrinsic evidence; that the amendment setting forth the assignment to Donaldson should be allowed as a matter of course, citing *Kimball vs. Kimball*, 16 M., 219; *Kelly vs. Waters*, 31 M., 405.

For respondent it was insisted that the appended paper was not a promissory note; *Wait vs. Pomeroy*, 20 M., 425; *Brooke vs. Hargraves*, 21 M., 254; *Chandler vs. Carey*, 64 M., 237; *Altman vs. Rittershofer*, 68 M., 287; that an amendment introducing a cause of action barred by the statute will not be allowed, *Gorman et al. vs. Circuit Judge*, 27 M., 138 (506); *Mich. Cent. Ry. Co. vs. Circuit Judge*, 35 M., 227 (495); *Com. Fire Ins. Co. vs. Circuit Judge*, 77 M., 236 (498); *Nugent vs. Circuit Judge*, 93 M., 462 (496), and that the original declaration fail-

ing to aver an assignment, was no declaration, *Altman vs. Fowler*, 70 Mich., 57.

521 KELLY vs. CIRCUIT JUDGE (Wayne), No. 12898½.

To compel allowance of amendment to declaration.

Order to show cause denied June 21, 1892.

The circuit judge gave two reasons for refusing to allow the amendment, (1) because the right of action arose in 1881, and plaintiff is chargeable with laches; (2) because the proposed amendment set up a new cause of action.

522 THIRD NATIONAL BANK OF DETROIT vs. CIRCUIT JUDGE (Wayne), 81 M., 438.

To strike from the files an amendment to a chancery bill allowed by respondent, for insufficiency which can be remedied by another or other amendments to the bill.

Denied June 13, 1891, as within the discretion of the circuit judge.

523 EARLE vs. CIRCUIT JUDGE (Kent), No. 12692.

To vacate an order granting leave to amend and continuing injunction until such amendment should be filed, and to enter order dismissing bill.

Denied June 10, 1892, with costs.

A bill had been filed against relator and another, and a preliminary injunction had been granted, restraining relator from paying over to his co-defendant any interest of such co-defendant in his father's estate. Relator demurred generally to the bill, and upon the hearing the court announced that he would sustain the demurrer with leave to plaintiff to amend,

and that in the meantime the injunction would be continued in force.

An order was entered January 4, 1892, sustaining the demurrer, but granting plaintiff leave to amend the bill of complaint within ten days and continuing the injunction in force for that period. Afterwards, on January 11, 1892, an order was entered permitting complainant to file certain amendments and reviving and continuing the temporary injunction.

524 RIDEOUT vs. CIRCUIT JUDGE (Hillsdale), No. 11935.

To allow an amendment to an answer to a bill to foreclose a mortgage.

Denied May 5, 1891, with cost.

Relator, under an arrangement with the trustees of Hillsdale College in 1874, erected a building upon the college grounds for certain purposes.

In 1884 the trustees filed a bill of complaint against relator to restrain him from placing a dining room in said building so erected and to determine what rights relator had in the same.

A decree was entered in 1888, which was affirmed by this court in August, 1890 (82 M., 94). It was held in that case that relator's right was one personal to himself and not transferable.

In March, 1886, relator executed a mortgage upon the building so erected by him, to one Drake.

In September, 1887, Drake filed a bill to foreclose. Relator answered. After the decision in Hillsdale College vs. Rideout, relator asked leave to file an amended answer in the foreclosure proceeding, setting up that at the time that the mortgage was given he had no interest in the property subject to mortgage.

525 DUBOIS vs. CIRCUIT JUDGE (Calhoun), No. 16231½.

To compel the allowance of an amendment, in the date of the return of a sheriff in an attachment suit, in a case where the sheriff returned that he executed the writ in the afternoon of Nov. 30, and it is insisted that he did not execute it until December 1, and in the meantime certain chattle mortgages had been filed.

The affidavits upon the motion before the circuit judge were conflicting, the sheriff insisting that his return is correct.

526 COLLINS vs. CIRCUIT JUDGE (Muskegon), No. 12694½.

To compel amendment of officer's return to a writ of replevin.

Order to show cause denied April 5, 1892.

The return showed personal service by delivery of a certified copy of the writ to defendant, together with a copy of the inventory and appraisement.

Defendant filed an affidavit admitting the service upon him of papers, having this indorsement: "Of inventory and writ of attachment, a true copy, to which I do hereby certify. Wm. H. Smith, under-sheriff."

Relator contended that the paper served was not a certified copy within the statute; that the character of the paper should appear in the certificate; that the certificate should set forth the comparison, and that the certificate should be that of the clerk of the court out of which the writ issued.

527 BEECHER vs. CIRCUIT JUDGE (Wayne), 70 M., 363.

To compel respondent to hear a motion for leave to amend a plea of the general issue, by adding a notice of justification

on the merits, and to set aside a former order granting such motion on the payment of \$1,000 costs.

Granted May 18, 1888.

Held, that the terms imposed were not just or reasonable.

528 GREEN vs. PROBATE JUDGE (Eaton), 40 M., 244.

To vacate an order made without notice, amending a former order respecting a claim which was presented to respondent acting in lieu of commissioners.

Granted January 23, 1879.

529 McDONALD vs. CIRCUIT JUDGE (Bay), No. 14228½.

To compel vacation of order modifying judgment.

Order to show cause denied June 5, 1894.

In an action for negligent injury relator recovered a judgment for \$5,000. Defendant moved for a new trial, alleging, among other things, that the verdict was excessive. The court entered an order granting a new trial unless plaintiff would consent to a reduction of the judgment to \$1,500.

530 FREDERICK vs. CIRCUIT JUDGE (Mecosta), 52 M., 529.

To correct a judgment entry.

Granted February 6, 1884.

Goods held by a sheriff under an attachment were taken from him, on a writ of replevin, before the attachment proceedings had been decided.

Held, that judgment in favor of the sheriff, in such case must be for a return of the property and not for the special value of his lien. Costs were denied, it appearing that the occasion for the issue of the writ was the error of relator's counsel.

531 GRAY vs. CIRCUIT JUDGE (Saginaw), 49 M., 628.

Mandamus to compel amendment of judgment in replevin so as to require return of the property.

Denied June 16, 1883, where the application was not made until several terms of court after execution had been satisfied, nor until a new judge was elected.

532 BURT vs. CIRCUIT JUDGE (Wayne), No. 15630.

To compel respondent to permit an amendment to the record in a suit in which relator, the defendant therein, had recovered a judgment for costs, correcting the name of one of the plaintiffs.

Order to show cause granted May 26, 1896. Discontinued after return filed June 3, 1896.

533 MINOR vs. CIRCUIT JUDGE (Wayne), No. 14700.

To compel the vacation of an order changing a judgment entry.

Denied February 28, 1895, with costs.

Relator, a non-resident, sued S. in Justice Court. S. gave notice of set-off, and recovered a judgment of \$87.00. Plaintiff appealed and had a verdict for \$4.40. Judgment was entered for the amount with full costs. Upon application such judgment was vacated and a judgment without costs to either party was entered. The circuit judge returned that in directing the first judgment entry he had overlooked the matter of costs and had intended to deny costs to either party.

534 GANTER vs. CIRCUIT JUDGE (Wayne), No. 11913.

To compel respondent to amend a judgment so as to show that said judgment was for work and labor under Act No. 94, Laws of 1887.

Denied April 22, 1891, with costs.

The suit was commenced November 19, 1889, for "services as traveling agent, putting up machinery and labor done at the rate of \$75 a month," between October 22, 1883, and October 22, 1887. Judgment rendered September 17, 1890. Motion to amend made in March, 1891. The trial court was not asked to specify that any portion of the claim was preferred, nor was any claim made upon the trial that the same or any part thereof was a labor claim.

Respondent's contention was, that the declaration did not claim, and the proofs did not show, it to be a labor claim; that there was nothing in the record to amend by; that in order to get the benefit of the statute, the claim should be set forth as a labor claim in the declaration, and that the statute was not retroactive.

535 MILLER ET AL. vs. CIRCUIT JUDGE (Lenawee), No. 15840½.

To compel the modification of a chancery decree.

Order to show cause denied October 27, 1896.

536 HIAWATHA TOWNSHIP vs. CIRCUIT JUDGE (Schoolcraft), No. 12481, 90 M., 270.

To vacate an order amending an enrolled decree.

Denied February 10, 1892.

Harrison township filed a bill against relator township. Upon the hearing the circuit judge announced that, by reason of some defect, the bill would be dismissed without prejudice. A decree was afterwards presented to the court by defendant, which did not contain the words "without prejudice." The omission was not noticed by the court or by counsel for complainant. The second bill was filed and the former decree was pleaded in bar, whereupon the application for an amendment was made and granted.

537 WHITE vs. CIRCUIT JUDGE (Kent), 47 M., 645.

To require respondent to restore to the files a plea "puis d'arrien continuance," which had been over-ruled on demurrer in Justice Court, and which, on appeal, had been stricken from the files on plaintiff's motion.

Granted October 11, 1881.

538 HUNT vs. CIRCUIT JUDGE (Jackson), 41 Mich., 5.

To set aside a plea in chancery as irregular.

Denied June 3, 1879.

Held, that an irregular plea can be considered on appeal if important to a final disposition of the case, and mandamus does not lie to set it aside.

539 McOMBER vs. HOLMES (Justice of the Peace), 41 M., 417.

To compel respondent to vacate an order allowing a plea in bar to be interposed after over-ruling a plea in abatement, and to assess damages.

Order to show cause denied October 7, 1879.

Held, that a plea in bar is allowable in the court's discretion after plea in abatement is overruled.

540 O'BRIEN vs. CIRCUIT JUDGE (Alpena), No. 14920, 106 M., 42.

To set aside an order overruling a plea of a former suit pending.

Granted July 2, 1895, with costs against Turnbull.

February 6, 1895, one Rothschild filed a bill in the Wayne Circuit making the relator, J. D. Turnbull and Wm. Monaghan parties defendant, and asking petitioner to account for moneys received by him as trustee upon a certain judgment. Subpoenas were issued and served.

On February 28, 1893, Turnbull filed a bill in the Alpena Circuit against Rothschild and relator, seeking a personal decree against a relator and involving a like accounting. In the latter case relator interposed the plea of a former suit pending.

Relator insists that the order overruling the plea is not an appealable order; that relator's remedy is by mandamus; *Kirchner vs. Wood*, 48 M., 199; *Barnum W. & I. Wks. vs. Circuit Judge*, 59 Mich., 272 (825); that a plea of former suit pending is a good plea if both courts are in the same general jurisdiction and the suits in each are in a court of equity, 1 Danl. Ch. Pr., 632-633; *Claywell vs. Sudderth*, 77 N. C., 287; *Boun vs. White*, 24 Hun, 45; that such plea is good although the parties are not identical, if substantially the same, and the matter can be litigated in the first suit as completely as in the second. 1 Danl. Ch. Pr., 635; *Gray vs. R. R. Co.*, 77 U. C., 299; *Crane vs. Larren*, 15 Oregon, 345; *Rowley vs. Williams*, 5 Wis., 151; that as no issue was taken with relator's plea, the latter is admitted to be true, Chancery Rule No. 25; 1 Danl. Ch. Pr., 636-637.

541 CHAPIN ET AL. vs. CIRCUIT JUDGE (Montcalm), No. 14627, 104 M., 232.

To set aside an order overruling a plea to the jurisdiction of the court, upon a bill filed by an assignee to reach real estate in Ingham County, which, it is alleged, was conveyed away by the assignors in fraud of creditors.

Granted February 26, 1895.

Held, that it was not intended by 3 How. Stat., Sec. 8749, to repeal How. Stat., Sec. 6612, or to divest other circuit courts of equitable jurisdiction where the subject matter is local.

542 LAMBIE vs. CIRCUIT JUDGE (Lenawee), No. 14095.

To compel vacation of order allowing a general appearance in a civil suit to be withdrawn, and a plea in abatement to be filed, setting forth that the person serving the summons was an interested party, and therefore incompetent.

Denied October 27, 1894, with costs.

Relator cited *Thompson vs. Ins. Co.*, 52 M. 522; *Ogdensburg R. R. vs. Vermont R. R.*, 63 N. Y. 176; *Handy vs. Ins. Co.*, 37 Ohio St. 366; *Miller vs. State*, 35 Ark. 276; *Rowland vs. Coyne*, 55 Cal. 1.

543 MITCHELL vs. CIRCUIT JUDGE (Bay), No. 12718.

To compel allowance of plea in abatement.

Denied April 22, 1892, with costs.

In an action of assumpsit in which relator was defendant, he demanded a bill of particulars. A paper purporting to be such was served. Defendant regarding the bill as insufficient, failed to plead and his default was entered and made absolute. Defendant afterwards filed a plea in abatement, adding a plea of the general issue with notice of the statute of limitations. Subsequently defendant moved to set aside the default.

The court granted the motion, allowed defendant's plea of the general issue to stand, but refused to allow the plea in abatement.

544 ARNO vs. CIRCUIT JUDGE (Wayne), 42 M., 362.

To vacate a default and strike a plea in abatement from the files.

Granted January 7, 1880.

Relator brought suit under Act. No. 113 of 1877, against a corporation and individual stockholders jointly. The corporation counsel gave plaintiff's attorneys an oral notice of retainer, but certain attorneys, retained by the stockholders, without giving notice of retainer, pleaded in abatement in the name of the corporation before the corporation counsel had pleaded. The latter afterwards pleaded the general issue. Plaintiffs disregarded the plea in abatement and were defaulted.

545 ODNAH IRON CO. vs. CIRCUIT JUDGE (Gogebic), No. 14867½.

To vacate an order sustaining a demurrer to a plea in abatement interposed by defendant, a foreign corporation, in a suit brought against it for alleged negligent injuries, which plea set forth that plaintiff's declaration shows that the said cause of action did not arise within the State of Michigan, but arose and occurred wholly without the State, to wit, in the County of Iron, in the State of Wisconsin, and that said defendant, being a foreign corporation organized under the laws of the State of Wisconsin was not, for the said cause of action, amenable to the process of the Circuit Court for the County of Gogebic.

Order to show cause denied April 16, 1895.

Relator contended that How. Stat., Sec. 8145, confers jurisdiction upon our Courts only in cases where the cause of action arises within the State; Maxwell vs. Circuit Judge, 60 M., 36 (24); Hartford Ins. Co. vs. Owen, 30 M., 441; Reath vs. Telegraph Co., 89 M., 22; Watson vs. Circuit Judge, 24 M., 38 (17); and that the proper manner of raising the question is by plea in abatement, Maxwell vs. Circuit Judge, supra.

546 CHAPPLE vs. CIRCUIT JUDGE (Delta), No. 15412½.

To vacate an order overruling a demurrer to a declaration, filed by a married woman, for seduction.

Order to show cause denied February 18, 1896.

**547 STONE (Receiver) vs. CIRCUIT JUDGE (Ingham), No. 14789½,
105 M., 234.**

To vacate order sustaining a demurrer to a plea in abatement interposed by relator, to a petition by a creditor of the bank, filed without leave being first obtained.

Order to show cause denied May 7, 1895.

**548 MERCHANTS' NAT. BANK vs. CIRCUIT JUDGE (Muskegon),
No. 12905½.**

To compel respondent to enter an order sustaining a demurrer.
Order to show cause denied June 29, 1892.

549 FOWLE vs. CIRCUIT JUDGE (Wayne), No. 16401½.

To dismiss an answer claiming the benefits of a cross bill, filed in proceedings to enforce a lien for materials furnished to contractors.

Order to show cause denied June 28, 1897.

Fowle is the owner of the Marlborough Flats, so-called, an apartment dwelling house constructed in 1895. Hollands & Sons were principal contractors. The Detroit Lead Pipe and Sheet Lead Works, Louis Blitz, and others, were material-men who furnished materials to Hollands & Sons. Fowle claims he has overpaid Hollands & Sons. These material men claim to have filed mechanics' liens. The Detroit Lead Pipe Works filed its bill to enforce its alleged lien, making the Hollands and Fowle, and all the other lien claimants, defendants. The defendant Louis Blitz asserts a claim for glass furnished to Hollands for the building. He filed his answer June 2nd, 1896, to the bill of the complainant and prayed the benefit of a cross-bill. No relief was asked in this cross-bill answer against the complainant. The relief asked was wholly against Fowle, a co-defendant, and his property, and no service was made upon Fowle.

550 CRISTY vs. CIRCUIT JUDGE (Wayne), No. 16278.

To vacate an order striking from the files certain special interrogatories, addressed to a garnishee defendant, a foreign corporation.

Granted, with costs against the garnishee defendant, May 5, 1897.

551 HACKLEY vs. CIRCUIT JUDGE (Muskegon), 58 M., 454.

552 HACKLEY vs. CIRCUIT JUDGE (Muskegon), 58 M., 454.

To vacate an order striking from the files a paper executed by Harriet P. Hackley, waiving all errors and exceptions in a matter which had been tried in the Circuit Court, in which she was a party, waiving the right to move for a new trial and consenting that the verdict and judgment against her should stand as final and conclusive.

Granted November 18, 1885.

Harriet P. Hackley filed a petition in the Probate Court claiming to be the widow of Porter Hackley, and asking for an allowance. The court made an order granting an allowance. On appeal a jury found that she was not the widow. Pending the time fixed for settlement of a bill of exceptions, the paper referred to was signed and filed. Afterwards a member of the firm of attorneys who had appeared for claimant, moved the court to strike the paper from the files, alleging that he held an assignment of the interest of Harriet P. Hackley in the decedent estate and that the stipulation was a fraud upon his rights. The court below granted the motion.

553 CLINK vs. CIRCUIT JUDGE (Muskegon), 58 M., 242.

To vacate an order striking from the files a paper writing purporting to be a recognizance of special bail, filed by relator on Monday, June 8, the twenty days after the return day having expired on Sunday, June 7.

Denied without costs, October 27, 1885.

The plaintiff in the suit moved the Circuit Court to strike the paper from the files, because (1) it was not executed and filed within twenty days after the return day of the writ; (2) before it was filed plaintiff had taken an assignment of the bond to the

sheriff and commenced suit thereon; (3) it was not taken and acknowledged before any officer or person authorized to take acknowledgements of recognizances of special bail, and (4) it was void and filed without authority. The court granted the motion and the paper was stricken from the files.

Held, that if the twenty days, within which a person arrested on a *capias* is entitled to file special bail, expire on Sunday, he has the whole of the following day in which to file it; that a recognizance of special bail acknowledged before a Notary Public is void; that a motion to strike from the files, is the proper procedure for getting rid of a document that is a nullity; that a default for failing to file special bail may be disregarded if prematurely entered and if an attempt in good faith has been made to file such bail but the bail turns out to be a nullity, defendant should be allowed a further reasonable opportunity to file it and to perfect it if excepted to.

554 WALSH (Pros. Attorney) vs. CIRCUIT JUDGE (St. Clair), No. 15172½, 64 N. W., 1045.

To set aside an order overruling relator's objections to the consideration of defendant's answer, in a proceeding for the sale of certain land for delinquent taxes, on the ground that no copy of said answer had been served on relator ten days prior to the first day of the term, and also to set aside an order dismissing said proceedings, because (1) the order published lacked the seal of the court, or a scroll in place thereof, and (2) because there are no dollar marks in the columns or at the head of the columns in the published lists indicating that a money decree is asked for.

Order to show cause denied October 24, 1895.

The court say: "In this matter it appears upon the face of the application that the court," for the purpose of having the determination by the Supreme Court, "held the objections made to the proceedings good. The court should have passed upon each of the points raised upon its merits. The questions sug-

gested are more properly reviewable on appeal, and the court below should have regarded the matter in that light. In any event, we do not feel called upon to review questions arising during the course of a proceeding, at least until the final judgment of the court below has been given after full consideration. The application will therefore be denied."

555 LATIMER vs. CIRCUIT JUDGE (Muskegon), No. 15565.

To strike from the files a petition filed by the Auditor General for a rehearing, in the matter of an application for the sale of certain lands for delinquent taxes, for the reason that the Attorney General, and counsel employed by the City of Muskegon, appeared for petitioner upon the application for a rehearing to the exclusion of the prosecuting attorney.

Denied May 6, 1896, with costs.

It appeared that a hearing had been had on the original petition and objections filed; that the prosecuting attorney appeared therein; that the petition was dismissed as to a number of parcels of land; that afterwards a petition for a rehearing was filed by the Auditor General, with the Attorney General and attorneys employed by the City of Muskegon, that City being directly interested in the proceedings, appearing as solicitors; that afterwards and before the hearing, relator and other parties to the original proceeding moved to strike from the files the petition for a rehearing, and upon that application the prosecuting attorney appeared with the Attorney General and counsel for the City of Muskegon.

556 BURKLE ET AL. vs. CIRCUIT JUDGE (Ingham), 42 M., 513.

To compel the respondent to restore certain special findings in an ejectment case.

Denied January 20, 1880.

In ejectment against relators the declaration contained two counts, in one of which plaintiff claimed the fee and in the other only a life estate. Plaintiff recovered on the count last mentioned. The jury assessed the increased value of the land by reason of the improvements, at \$1,480. Judgment was entered for plaintiff that she recover possession and the court struck out the special findings.

Held, that the statute requiring payment for improvements is not applicable to a case where the interest recovered is less than the fee.

557 RICHMOND vs. CIRCUIT JUDGE (Montmorency), No. 15234.

To vacate order striking from the files, relator's objections, in proceedings instituted for sale of lands for delinquent taxes, because copy not served upon the prosecuting attorney ten days prior to the commencement of the term.

Denied December 10, 1895, with costs.

558 DETROIT SULPHITE FIBRE CO. vs. CIRCUIT JUDGE (Wayne), No. 15565½

To compel the correction of the answer given by the jury to a special question submitted at the trial of a suit against relator for injuries sustained while in its employ.

Order to show cause denied June 20, 1896, on the ground that relators' remedy is an appeal. The jury found for plaintiff. Four questions were submitted, three of which were answered "No" and one "Yes." The latter answer was inconsistent with the general verdict. The court had announced the discharge of the jury but before leaving their seats, a poll was had and a disagreement appearing as to the answer to this question, they retired and afterwards came into court with the answer changed from yes to no.

560 JONES vs. CIRCUIT JUDGE (Shiawassee), No. 14816, 105 M., 664.

To compel respondent to require plaintiff, in a suit against relator, to file security for costs, the suit having been brought for the personal work and labor of the plaintiff, who had complied with the requirements of How. Stat., Sec. 7717 e.

Denied July 2, 1895, with costs.

561 HALL vs. CIRCUIT JUDGE (Eaton), No. 12029½.

To vacate an order requiring relator as plaintiff in a certain cause to give security for costs.

Order to show cause denied June 2, 1891.

562 McDOWD vs. CIRCUIT JUDGE (Wayne), 41 M., 551.

To compel respondent to require full security for costs from the appellee in a case appealed from a circuit court commissioner on summary proceedings.

Denied October 8, 1879.

The circuit judge required of the defendant and appellee, who was a non-resident, security for costs in the sum of \$25 only, and the Supreme Court held that as there is no statute requiring the circuit judge to exact security in such cases, that it is discretionary with the judge to require security and his action is not reviewable.

563 NEDERLANDER vs. CIRCUIT JUDGE (Wayne), No. 14141½.

To vacate an order requiring relator, plaintiff in a cause commenced by capias ad respondendum, to give security for costs and also an order reducing defendant's bail in said cause from \$3,000 to \$1,000.

Order to show cause denied May 2, 1894, on the ground that the matters are within the discretion of the circuit judge.

564 HUSHIN vs. CIRCUIT JUDGE (St. Clair), No. 13968½.

To compel vacation of order requiring plaintiff to file security for costs in a negligence case.

Order to show cause denied January 16, 1894.

565 RABIDON vs. CIRCUIT JUDGE (Muskegon), No. 16049½.

To vacate an order requiring the plaintiff, after a verdict in his favor, and after defendant had given a bond to stay proceedings and upon the hearing of a motion for a new trial made by defendant, to give security for costs in the sum of \$250.

Order to show cause denied February 11, 1897.

566 HORN vs. CIRCUIT JUDGE (Wayne), 39 M., 15.

To require respondent to vacate an order of court requiring relator to give security in addition to what he had previously given and which was accepted under sanction of the clerk, in certain proceedings taken under the watercraft law, being Chap. 210, of the Comp. L.

Granted June 11, 1878.

567 RABIDON vs. CIRCUIT JUDGE (Muskegon), No. 15648; 68 N. W., 147; 3 D. L. N., 362.

To compel respondent to set aside an order directing relator to give security for costs, in a suit in which he appeared as next friend to an infant plaintiff, where it appeared that the next friend was wholly irresponsible financially.

Granted July 21, 1896, with costs against defendant, on the ground that the statute, How. Sec. 8124, does not contemplate that the person appointed shall be financially able to pay costs but that he shall be liable to respond.

568 MEAD vs. COMMISSIONERS OF HIGHWAYS, 15 M., 518.

The party appearing to resist a motion, where the moving party makes default, is entitled to the costs of the motion.

569 STEWART vs. CIRCUIT JUDGE (Antrim), No. 15238.

To set aside taxation of costs for the reason (1) that the notice thereof was insufficient, and (2) that the circuit judge had no authority to tax same at Chambers.

Denied December 4, 1895, with costs.

The notice was served personally at Bellaire where counsel upon whom served resided, on the evening of June 26, for June 29, at Traverse City, thirty-five miles distant.

The taxation was by the circuit judge at Chambers, the clerk being disqualified. Respondent insisted that the taxation of costs is a ministerial act and may be done at Chambers. *Abbott vs. Mathews*, 26 M., 175, and inasmuch as, upon motion of relator, a re-taxation was had in court, the objection that the first taxation was at Chambers, is without force.

570 STEINHAUSER vs. CIRCUIT JUDGE (Wayne), 42 M., 463.

To compel circuit judge, who did not preside during the trial of a case appealed from Justice Court, to award costs.

Denied January 13, 1880, on the ground that the discretion given by the statute can only be exercised by the judge who heard the case.

571 DORLAND vs. SUPERIOR COURT JUDGE (Grand Rapids), 78 M., 182.

To compel respondent to make an order directing that relator's witness' and attorney fees in a street-opening case be taxed and paid by the City.

Granted as to witness' fees, but denied as to attorney fees, November 15, 1889.

Held, that Sec. 19, of Act No. 236, Laws of 1889, making it lawful for a judge in a street-opening case to order the payment by the city to respondent of such a reasonable attorney fee as he may deem just, not exceeding \$25, is not mandatory, but the matter of attorney fees is left discretionary with the judge.

572 HESTER vs. COMMISSIONERS OF PARKS AND BOULEVARDS
(Detroit), No. 11755½, 84 M., 450.

To compel payment of witness fees and an attorney fee in proceedings to widen a boulevard.

Denied February 5, 1891, on the ground that costs are recoverable only when awarded by statute, and that Act No. 388, Local Acts of 1889, under which proceedings were had, makes no provision for witness and attorney fees.

573 KEELER vs. CIRCUIT JUDGE (Shiawassee), No. 11781½.

To vacate an order directing a re-taxation of costs where the clerk struck out an item because the affidavit was defective as to that item, and the court set aside the taxation and gave leave to file a new bill with proper affidavits.

Order to show cause denied February 24, 1891.

574 KNORR ET AL. vs. CIRCUIT JUDGE (Macomb), 78 M., 168.

To vacate a judgment for costs in favor of plaintiff in an action for damages for obstructing a highway, where the judgment was less than \$100.

Denied November 15, 1889.

Held, that the provision in How. Stat., Sec. 6815, giving justices of the peace jurisdiction in such cases, confers at best

only concurrent jurisdiction with the Circuit Court, and, where in such a suit, the only matter in issue by the proofs is whether or not the particular spot where the obstruction was placed was in the public highway, as constituted by user, and that question is determined in favor of the plaintiff, he is entitled to costs under How. Stat., Sec. 8964, although the judgment is less than \$100.

575 HAWKINS vs. CIRCUIT JUDGE (Newaygo), 62 M., 531.

To compel respondent to vacate an order remanding a case to the clerk for re-taxation of costs after an appeal from a taxation by that officer.

Granted July 21, 1886.

576 WINNE vs. CIRCUIT JUDGE (Lenawee), 74 M., 329.

To compel respondent to vacate an order for costs and enter judgment therefor in favor of relator.

Granted February 20, 1889.

Draper obtained judgment against Maloney before a justice and garnished a railway company. The company admitted its liability and paid into court the sum of \$35.70, and received its discharge. Relator claimed the money, but the justice rendered a judgment against him, and for costs. Relator appealed and had a verdict in his favor in the Circuit. Upon motion for judgment he asked the court for costs, but instead thereof the court gave judgment for costs against him.

Held, that there being no provision of law for costs against claimant in a case of this kind, and none expressly authorizing the court in its discretion to award costs against him, the action of the circuit judge in so doing was invalid, the claimant having prevailed.

577 JACKSON vs. CIRCUIT JUDGE (Leelanau), No. 15200; 65 N. W., 406; 2 D. L. N., 761.

To vacate an order setting aside a taxation of costs in favor of plaintiffs against a garnishee defendant who had denied any indebtedness, but against whom plaintiffs had recovered a judgment.

Granted December 10, 1895, with costs against plaintiffs, relator being entitled to his costs under How. Stat., Sec. 8073.

578 WOLCOTT vs. CIRCUIT JUDGE (Lenawee), No. 15129; 65 N. W., 286; 2 D. L. N., 679.

To compel the allowance of counsel fees to a garnishee defendant, under How. Stat., Sec. 8098.

Denied, with costs, November 19, 1895. Opinion filed December 10, 1895.

Held, that in a contested case, How. Stat., Sec. 8073, controls, and the costs recoverable in such case are those taxable under the general statute as to costs.

579 SHERMAN vs. CIRCUIT JUDGE (Washtenaw), 52 M., 474.

To compel the allowance of certain items of defendant's bill of costs, in a case appealed from Justice Court, and afterwards discontinued by plaintiff.

Granted January 29, 1884.

Held, that (1) the statute permitting a circuit judge to award costs, on an appeal from a justice, to either party (How. Stat., Sec. 7026) does not apply where the plaintiff has discontinued after the case has been sent back to the Circuit for a new trial upon a reversal in defendant's favor; in such cases defendant is entitled to costs as a matter of right.

(2) An appellant's right to costs is fixed by the entry of a judgment for reversal with costs, if his adversary discontinues without taking a new trial.

(3) Witness fees must be taxed as costs in accordance with the showing made by the statutory affidavit attached to the bill of costs, unless there is a counter showing.

(4) When an appeal from the taxation of costs by the county clerk is taken to the circuit judge, the party appealing should specially except in writing to the allowances or disallowances complained of, and the bill of costs should then go upon those exceptions alone and on the same showing as was made to the clerk.

580 GENESEE COUNTY SAVINGS BANK vs. CIRCUIT JUDGE
(Ottawa), 54 M., 305.

To vacate an order refusing to set aside a taxation of costs and order a re-taxation.

Denied, with costs, June 25, 1884.

The charges were for expenses incurred in the case of attached property consisting of eight barges.

Held, that the affidavit for the re-taxation was not sufficiently specific, and that it is doubtful if such expenses are, after the release of the property upon supersedeas bond, a lien upon the property.

581 KOENIGSHOF vs. CIRCUIT JUDGE (Berrien), 59 M., 245.

To compel respondent to vacate an order awarding costs to defendant, and to award costs to plaintiff in an action against one Spaulding, for digging a trench from Clear Lake in the direction of plaintiff's land, causing the water to flow upon and injure said lands, wherein plaintiff had a verdict for \$37.

Granted January 20, 1886.

Held, that under the second subdivision of How. Stat., Sec. 8964, plaintiff was entitled to costs.

582 GOTT vs. SUPERIOR COURT JUDGE (Detroit), 42 M., 625.

To require respondent to enter a judgment for costs in favor of relator, who is defendant in an action of assumpsit, wherein the declaration contained a special count and the common counts; upon the trial, upon defendant's motion, plaintiff elected to seek recovery on the special count and had judgment, which was reversed in the Supreme Court, which found that the special count contained no cause of action; plaintiff then discontinued as to the special count, and defendants, assuming that the election on the former trial had cut off recourse to the general counts, moved for judgment for costs.

Denied February 11, 1880, with costs.

583 HEWITT vs. CIRCUIT JUDGE (Ingham), 44 M., 153.

To vacate a judgment as to costs, in a case where plaintiff recovered judgment in Justice Court for \$248.66, and on appeal the judgment was reduced to \$104, and costs were given to defendant.

Denied June 23, 1880, with costs.

Held, that costs in such cases are under the control of the court, and its discretion in deciding thereon will not be reviewed.

584 CHICAGO & WEST MICH. RY. CO. vs. CIRCUIT JUDGE (Muskegon), No. 15479½.

To compel a re-taxation of plaintiff's costs in a suit commenced against respondent, wherein the declaration contained three counts, and plaintiff withdrew his claim for a recovery under two of the counts, and the objection was that the bill as taxed included the fees of a witness who was called to sustain the claim under one of the counts withdrawn.

Order to show cause denied March 12, 1896.

585 BLACK vs. CIRCUIT JUDGE (Wayne), No. 14671, 104 M., 286.

To compel respondent to set aside an order denying a re-taxation of costs in ejectment in favor of each of the defendants, where the case had gone to trial, and all the defendants were acquitted.

Denied March 5, 1895, with costs.

Held, that How. Stat., Secs. 8964, 8967 to 8969 contemplate but one bill of costs in favor of defendants in such case.

586 LEFEVRE ET AL. vs. CIRCUIT JUDGE (Wayne), No. 15992½.

To vacate an order granting taxable costs to the proponents of a will after a verdict against the will, on appeal from the Probate Court, and after costs had been awarded to relators as contestants.

Order to show cause denied December 18, 1896.

587 GRUNER vs. CIRCUIT JUDGE (Wayne), No. 13341.

To vacate an order allowing costs against relator on appeal from an order made by the probate judge appointing relator as administrator, with the will annexed, of an estate, in a case where the appointment was made in lieu of those whose appointment was asked for, and the selection was made by the probate judge without solicitation on the part of relator.

Granted March 8, 1893, without costs.

588 BRILLANT vs. CIRCUIT JUDGE (Wayne), No. 15413; 67 N. W., 1101; 3 D. L. N., 331.

To vacate so much of a judgment in favor of contestants, in a contest over the admission of a will to probate, as allows to proponents their actual expenses incurred in the trial in the Circuit and Supreme Courts.

Granted July 8, 1896, with costs against proponents.

Held, that while under How. Stat. Sec. 6791, the court might in a meritorious case allow costs payable from the estate to either or both parties, it could do no more than award taxable costs.

Cheever vs. North, 64 N. W., 458.

589 STORTZ vs. CIRCUIT JUDGE (Ingham), 38 M., 243.

To compel respondent to vacate an order giving costs to defendant in a breach of promise case, on a judgment for plaintiff for \$100.

Denied June 23, 1878.

590 FRANK VS. CIRCUIT JUDGE (Wayne), 54 M., 241.

To vacate order granting costs to a defendant on a judgment in his favor upon one count of the declaration, where plaintiff had judgment on other counts.

Denied June 24, 1884.

Held, that it did not satisfactorily appear that the count on which defendant had a verdict in his favor was for the same cause of action for which plaintiff recovered.

591 BERNDT ET AL. vs. CIRCUIT JUDGE (Ionia), No. 15851; 69 N. W., 661; 3 D. L. N., 725.

To compel respondent to set aside a judgment for costs to defendant, in a replevin suit brought in the Circuit Court for a number of articles, appraised at \$241.60, all of which were taken on the writ, but plaintiff had a verdict for but two of the articles, valued at \$22.

Denied December 24, 1896, with costs.

Held, that under How. Stat., Secs. 8964 and 8967 the recovery being less than \$100, defendant is entitled to costs.

592 HENDERSON vs. CIRCUIT JUDGE (Wayne), No. 13184.

To compel respondent to allow full costs to defendant and appellee, in a case tried in the circuit where defendant had judgment, but which case was certified to that court by a justice of the peace, on the ground that it involved a question of title to certain lands, but in the circuit no such question was raised or tried, and the judgment of said court was rendered in favor of defendant, and for his actual disbursements.

Denied January 4, 1893, with costs.

593 AMPERSE vs. CIRCUIT JUDGE (Wayne), 14 M., 33.

To compel entry of an order specifying that relator was entitled to double costs.

Denied November 11, 1865.

Held, that under Comp. Laws, Sec. 3736, relator, as plaintiff was entitled to double costs, and no such order was necessary to perfect his right; that plaintiff should have appealed from the decision of the taxing officer to the Circuit Court, and from the decision of that court, if adverse, to this court by writ of error.

594 NICHOLS vs. CIRCUIT JUDGE (Ionia), No. 11911.

To compel respondent to award costs to defendants in an action of trespass on the case, brought by Caroline Reed for the removal of a blacksmith shop.

Denied May 6, 1891, with costs.

Plaintiff was the owner of the land upon which the shop stood, subject to a lease to one S., for use as a site for a blacksmith shop. S. assigned to G. and G. agreed to sell to R., the husband of plaintiff, who assigned to plaintiff. G. assigned to defendants, who removed the shop. Under the agreement between G. and R. the former was to retain title to the shop

until the same was paid for. The court found that defendants had the right to take the shop; that its value was \$200; that the amount due defendants was \$188.90, and gave plaintiff judgment for \$11.10, with costs to be taxed.

Relator insisted (1) that under the rule laid down in *Strong vs. Daniels*, 3 M., 466; *Inkster vs. Carver*, 16 M., 488; *Stortz vs. Circuit Judge*, 38 M., 243 (589); *Dikeman vs. Harrison*, 38 M., 617, the plaintiff having recovered a sum within the jurisdiction of a justice, defendant was entitled to costs and (2) that inasmuch as the Circuit Judge found as a matter of law that the title to the property was in defendants, and that they had the right to take it, there is no ground for application of the rule as to set off, under the general statute, in suits upon claims for unliquidated damages. *Bascom vs. Taylor*, 39 M., 684; *Smith vs. Warner*, 14 M., 152; *Carter vs. Snyder*, 27 M., 484.

595 HANEY vs. CIRCUIT JUDGE (Muskegon), No. 14257, 101 M., 392.

To compel respondent to vacate a judgment in favor of defendant for costs in an action for trespass on lands, on the recovery by plaintiff of a judgment for less than \$100.

Denied July 5, 1894, with costs.

Held, that the judgment was a final judgment; that all of the facts upon which the application is based are matters of record and the question is reviewable upon writ of error.

596 BLACK vs. CIRCUIT JUDGE (Wayne), No. 11784.

To compel relator to grant costs to appellants on discontinuance by plaintiff and appellee of case appealed from the Justice Court.

Denied, with costs, February 25, 1891.

Appellee moved to dismiss appeal because of defective affidavit and bond. The court at the hearing declined to dismiss, but granted leave to file new affidavit and bond, and pending discussion of what costs should be allowed to appellee on the motion, the court having intimated an intention to grant costs, the plaintiff discontinued.

597 OLSON vs. CIRCUIT JUDGE (Wexford), No. 11992.

To compel vacation of order granting costs.

Denied July 21, 1891, with costs.

Relator, as administrator, sued one Cummer, in case for negligence and had a verdict and judgment. Satisfied that the declaration was defective, respondent set aside the judgment and verdict, and gave defendant costs as for a trial and made payment thereof a condition precedent to a new trial. No question had been raised as to the sufficiency of the declaration until the presentation of the requests to charge.

598 LEONARD vs. CIRCUIT JUDGE (Muskegon), No. 12898.

To vacate order denying a motion for a re-taxation of costs of defendant on continuance.

Denied June 29, 1892, with costs.

599 DUNCOMBE vs. RICHARDS ET AL., 47 M., 646.

To compel re-taxation of costs.

Granted June 5, 1881.

Held, that the taxation of commissioners' fees in gross was improper, besides they should have been taxed in the court below, and that the charge for the copy of the testimony of a witness should only have been allowed on a proper affidavit.

**600 VOIGT BREWING CO. vs. CIRCUIT JUDGE (Wayne), No. 15340;
66 N. W., 217; 2 D. L. N., 857.**

To vacate an order setting aside allowance of term fees, in a case appealed from a judgment rendered by a circuit court commissioner in favor of relator, in proceedings to recover possession of certain premises, where relator recovered in the circuit and the circuit judge relied upon an unwritten rule, adopted by the

circuit judges of the court, disallowing term fees in appeal cases, and but for such rule the circuit judge would have allowed such fees.

Granted February 18, 1896, with costs, on the ground that no general practice, which the circuit judges may adopt, can set aside the statute.

601 MARTIN vs. CIRCUIT JUDGE (Wayne), No. 15846; 69 N. W., 75; 3 D. L. N., 604.

To compel an allowance of term fees as part of the taxed costs, the respondent being of opinion that no term fee should be taxed for terms at which it was apparent, from the nature of the business of the court, that the cause could not be reached.

Granted Dec. 4, 1896, with costs.

602 BEEM vs. CIRCUIT JUDGE (Newaygo), No. 13788, 97 M., 491.

To compel respondent to reinstate a trial fee of \$15, which was struck out of bill on appeal from the taxation of costs, in a case where plaintiffs appealed to the circuit, and upon the trial voluntarily submitted to a non-suit.

Granted Nov. 1, 1893, with costs, requiring the taxation of an attorney fee of \$10 as for the trial of an issue of fact.

603 WOLF ET AL. vs. CIRCUIT JUDGE (Osceola), No. 14444.

To compel respondent to retax the costs and strike out an item "for proceedings before notice of trial \$15.00," after the second trial of an action of ejectment, wherein relators were defendants, where, upon judgment against them on the first trial, defendants had paid the taxed costs, including a similar item.

Granted October 26, 1894, with costs against plaintiff.

604 FISHER vs. CIRCUIT JUDGE (Kent), No. 15201.

To set aside re-taxation of costs, including the disallowance of an item of \$2.20, the allowance of which had not been appealed from.

Granted as to the item of \$2.20 only, without costs, November 19, 1890.

605 AURORA IRON MINING CO. vs. CIRCUIT JUDGE (Gogebic), No. 12788.

To compel respondent to issue an attachment for costs against the attorneys in a suit brought against relator in which judgment of non-suit was rendered in favor of relator, and for costs, on the ground that the attorneys had an arrangement whereby they were to receive a moiety of the amount recovered, and had at one time an assignment of the claim, and therefore had a beneficial interest in the suit under Sec. 8988, How. Stat.

Denied June 22, 1892, with costs.

It appeared that some months before the judgment, the attorneys had re-assigned the claim to plaintiff, and respondent answered that there was no proof offered before him tending to show that said attorneys had any arrangement of the nature alleged, or any further interest than as attorneys, and respondent had found as a fact, that the only purpose of such assignment originally was as security for fees, the amount of which had not been determined.

606 COBB vs. SUPERIOR COURT JUDGE (Grand Rapids), 43 M., 289.

To compel respondent to refuse to recognize one, not an attorney, who appears as agent of the party for whom he seeks to act.

Granted April 14, 1880.

Held that a party cannot appear in a court of record by an agent who is not an attorney duly licensed to practice.

607 JENKS (Admr.) vs. PROBATE JUDGE (St. Clair), No. 13457, 96 M., 122.

To compel appointment of commissioners on claims at the instance of an administrator, in a case where commissioners on claims had been appointed after the appointment of a special administrator, but before the appointment of a general administrator, who had allowed a claim which the administrator refused to pay.

Denied June 16, 1893, with costs to be paid from the estate, on the ground that all parties had waived any objection to the proceedings, and that the more appropriate remedy to test the validity of the action would have been by appeal. See 95 M., 48, 156.

608 PULLING vs. PROBATE JUDGE (Wayne), No. 13221½, 97 M., 605.

To compel respondent to issue a warrant appointing three disinterested persons and authorizing them to set off to relator her dower in certain parcels of land, sold by her husband on contract during his lifetime, and before his marriage to relator, and in other lands.

Order to show cause denied January 4, 1893.

Held, that relator's remedy is by appeal. See In Re, Estate of Pulling, 97 M., 375.

609 TINSMAN (County Drain Comr.) vs. PROBATE JUDGE (Monroe), 82 M., 562.

To compel respondent to appoint commissioners to determine the necessity for the condemnation of land for drain purposes.

Denied October 22, 1890.

A township drain had been extended into an adjoining township, by the joint action of the commissioners of the two townships. An application was afterwards made to the county drain

commissioners, under Sec. 1, Chap. 8, of Act No. 233, Laws of 1889, to widen and deepen the drain, in which it was described as one continuous drain under one name.

Held, that the original drain and the extension were in fact and in law one drain, and were properly included in one proceeding for their widening and deepening; but that in such case the application must be signed by at least one freeholder who was assessed for the construction of the original drain, and by at least one who was assessed for the construction of the extension, which requirement is jurisdictional, and such facts must appear upon the face of the application.

610 GRATOPH vs. JUDGE OF PROBATE (Macomb), No. 13097.

To compel the appointment of special drain commissioners.

Granted October 26, 1892, without costs.

On presentation of the petition therefor, the judge of probate issued a citation to the several persons to be affected by said drain, and fixed the time and place of hearing on said petition; at the time appointed, the judge of probate determined that he was disqualified, adjourned the hearing, and called in the circuit judge, who held that the probate judge was not competent to issue the citation. Held that the issuance of the citation involved no exercise of judicial function, and that upon the day fixed for the hearing the circuit judge, acting as probate judge, naturally reviewed the whole matter set forth in the petition, under 3 How. Stat., Sec. 1740-c2.

611 TINSMAN (Co. Drain Comr.) vs. PROBATE JUDGE (Monroe), No. 11778.

To compel respondent to issue a citation in a drain matter for the appointment of three special commissioners.

Granted February 25, 1891, without costs.

Relator, as county drain commissioner, on the 18th of July, 1890, applied to respondent for the appointment of commissioners, under Act No. 227 of the Laws of 1885. Objection was made to the service of notice, and further, that the application did not show the amount of land originally taken for the drain, irrespective of the amount of land used. The Probate Court, at the hearing on August 19, dismissed the application for want of due service.

On January 23, 1891, petitioner presented a new application remedying the defects in the first, except that he did not state the amount of land originally taken. The probate judge denied the application, holding that the statute gave no power to amend; that this was in effect an amendment of the application, and that said application should set forth the land originally taken.

612 SERRELL (Dr. Comr.) vs. PROBATE JUDGE (Oakland), No. 15072; 65 N. W., 107; 2 D. L. N., 656.

Certiorari to Oakland.

To compel respondent to set aside an order refusing to appoint commissioners to determine the necessity of a public drain, and to appoint such commissioners.

The circuit judge refused the writ. Affirmed December 3, 1895, with costs.

Commissioners were appointed under a petition filed in March, 1894, who reported against the laying out of a drain, two of the commissioners signing said report, and one reporting in favor of the location of the drain. In January, 1895, relator again petitioned for new special commissioners, on account of the disagreement of the former ones.

Held, that the determination by the majority of the commissioners against the drain is conclusive.

**613 HINDS (Drain Commissioner) vs. PROBATE JUDGE (Monroe),
No. 11937½.**

To compel the appointment of commissioners in a drain matter.

Order to show cause denied April 14, 1891.

Respondent refused to act because it appeared that the drain commissioner was endeavoring to deepen and widen the drain, and also to extend it, in one and the same proceeding.

**614 SCHENCK (Dr. Comr.) vs. PROBATE JUDGE (St. Clair),
No. 12572.**

To compel appointment of special drain commissioners.

Denied March 2, 1892, with costs.

The probate judge declined to appoint, because, (1) although the petition bore date April 28, 1891, no further proceedings were taken until November 2, 1891, when the commissioner claims to have made his first order of determination, which said order was first filed in the Probate Court November 29, 1891, and no showing was made that it was not practicable to proceed in the matter at an earlier date, or to excuse the delay, and (2) that the records and minutes of the survey show such a substantial divergence from the route named in the original application as to render the proceedings void.

**615 KRESS (Co. Drain Comr.) vs. PROBATE JUDGE (Jackson), No.
12779, 92 M., 372.**

To compel respondent to impanel a new jury in proceedings under the drain law, on the discharge of the original jury, because unable to agree.

Granted June 17, 1892, without costs.

**616 CITY OF PORT HURON vs. CIRCUIT JUDGE (St. Clair),
No. 13385.**

To compel respondent to make the necessary order for the summoning and impanneling of a jury to hear proofs and determine the necessity for opening a street to Black River, in order to enable the city to construct a bridge across the river, and to fix the compensation for the land taken, it appearing that the said river is a stream navigable for vessels of 15 tons burden and over, and the petition to the court below failed to allege that permission had been granted by the board of supervisors, or that the location and plans of the bridge had been approved by the secretary of war.

Granted April 12, 1893, without costs.

617 PALMS vs. PROBATE JUDGE (Wayne), 39 M., 302.

To require respondent to exercise his statutory power of appointing a special administrator of an estate where an appeal had been taken from the appointment of a general administrator.

Granted October 9, 1878.

618 NORTHWESTERN MANUFACTURING COMPANY vs. CIRCUIT JUDGE (Wayne), 58 M., 381.

To compel respondent to have the value of its machinery, apparatus and outfit, formerly used in the making of oleomargarine and butterine, assessed by a jury, under the provisions of Act No. 186, Laws of 1885.

Denied November 4, 1885.

Act held unconstitutional.

619 SCHOBBER vs. PROBATE JUDGE (Wayne), 49 M., 323.

To require respondent to entertain relator's petition for the allowance of the will of one Grabo, under which relator had interests.

Granted October 18, 1882.

The will had been allowed by the King's Court of Wittenberg and petitioner asked that an authenticated copy be allowed by respondent, under Comp. L., 4342-3. Respondent claimed that the case was not within these provisions and that he had no jurisdiction, but held, that relator should first proceed under Act 101 of 1881.

620 MOORE vs. CIRCUIT JUDGE (Wayne), 55 M., 84.

To compel respondent to hear and proceed to judgment, in a case commenced against a non-resident as principal defendant and certain residents as garnishee defendants, and the default of the principal defendant had been entered under How. Stat., Sec. 8087, the circuit judge having refused to proceed for want of jurisdiction, in that no service of process had been made on the principal defendant within the State.

Granted October 15, 1884.

621 CHILSON vs. CIRCUIT JUDGE (Wayne), 60 M., 235

To compel respondent to order a trial upon a plea to the jurisdiction of the justice, from whose judgment relator had appealed, the plea being that the value of property replevined was \$200, and therefore the justice had no jurisdiction.

Denied February 16, 1886.

Held, that the jurisdiction of a justice, in replevin, attaches according to the claim in the affidavit, and having attached continues to judgment at least up to five hundred dollars, and that a plea in abatement is not necessary to destroy the jurisdiction of a justice depending upon the amount in controversy, if shown on the trial to be excessive.

622 BERRY vs. GEDDES (Justice of the Peace), 3 M., 70.

To compel respondent to issue process against one Kimball, at the suit of relator.

Denied 1853.

By the act incorporating the City of Adrian it appears that certain portions of the townships of Adrian and Madison now constitute the city, and the act provided that the justices heretofore elected for said townships were to remain in office until the expiration of the term for which they were elected. The respondent was one of such justices.

Held, that the section of the act incorporating the City of Adrian, which provided that the justices heretofore elected were to remain in office, is in direct conflict with the Constitution, which provides that when a justice of the peace shall remove from the township in which he was elected, or by change in the boundaries of said township he shall be placed without the same, he shall be deemed to have vacated his office. Constitution, Art. VI., Sec. 22.

623 MESSENGER vs. TEAGAN (Justice of the Peace), No. 14960, 106 M., 654. Certiorari to Wayne.

To compel respondent to issue a summons, under Act No. 460, Local Acts 1895, where the amount, the recovery of which is sought, exceeds \$300.

The circuit judge denied the writ, holding the act unconstitutional.

Reversed and writ granted October 8, 1895, without costs.

624 CITY OF DETROIT vs. RECORDERS' COURT JUDGE (Detroit), 40 M., 64.

To compel respondent to allow proceedings to be taken by the city to open a private alley.

Denied January 10, 1879.

Held that the common council could not institute such proceedings, except on application by responsible and interested parties, and it did not appear that such parties had been before or had applied to the council.

625 CITY OF DETROIT vs. RECORDERS' COURT JUDGE (Detroit),
No. 15152; 66 N. W., 587; 2 D. L. N., 979.

To vacate order quashing street opening proceedings instituted under Secs. 3064a to 3064y, How. Stat. .

Denied December 31, 1895, with costs, on the ground that Act No. 467, Local Acts 1895, superceded the provisions of the statute under which the proceedings were taken.

The case involved the question of the validity of said Act No. 467, which was passed previous to the last five days of the session, but was not approved by the governor until after the adjournment of the legislature.

626 CITY OF DETROIT vs. RECORDERS' COURT JUDGE (Detroit),
No. 16083; 4 D. L. N., 114; 71 N. W., 149.

To vacate an order quashing certain street opening proceedings, instituted under Act No. 467, Local Acts of 1895.

The trial court held the act void and the Supreme Court affirmed that determination and denied the writ, May 11, 1897, with costs.

627 SCHOOL DISTRICT NO. 7 (Port Huron) vs. CIRCUIT JUDGE
(St. Clair) No. 14477½.

To compel respondent to vacate an order dismissing certain proceedings instituted under How. Stat., Sec. 5114 to 5128, to condemn a parcel of land for a school site.

Order to show cause denied Oct. 23, 1894.

The land was occupied by a tenant, the owner being a non-resident of the county, and the owner was not served.

On the return day the tenant appeared specially, and moved to quash the proceedings because no proper service had been made upon him, it appearing by the return that the officer served upon the tenant a copy of the venire and notified him verbally "of the time and place where, and the object for which, said jury was summoned."

628 GRAND RAPIDS vs. SUPERIOR COURT JUDGE (Grand Rapids),
No. 13089, 93 M., 469.

To compel respondent to proceed upon a petition for the condemnation of the rights of a plank road company in certain streets.

Denied Nov. 18, 1892, with costs, on the ground that the act under which such proceedings were attempted is unconstitutional, as having an object not expressed in the title.

629 DETROIT SPRINGWELLS & DEARBORN RY. Co. vs. CIRCUIT
JUDGE (Wayne), No. 13186, 95 M., 318.

To compel respondent to appoint commissioners to ascertain and determine the necessity for taking and using, for the purpose of a suburban railway, so much of the right, title and franchise of the plank road company over, to and in the said highway as is required for relator's use, and to appraise and determine the damages and fix the compensation to be allowed therefor, under Act No. 67, Laws of 1891.

Denied April 21, 1895, with costs.

Held, that the description of the land sought to be taken was indefinite, and that the petition did not show that the land sought to be acquired was subject to condemnation.

**630 GRAND RAPIDS vs. SUPERIOR COURT JUDGE (Grand Rapids),
No. 14215, 102 M., 321.**

To compel respondent to set aside an order dismissing relator's petition for the establishment of permanent dock, safety, sanitary and building lines along the shores of Grand River, as provided by Act No. 358, Local Acts of 1891.

Granted October 16, 1894, with costs against respondents in the court below.

The circuit judge held the act unconstitutional.

Held, that the failure of respondent to answer amounts to an admission, under Supreme Court Rule No. 63, that all the material averments of the petition for the writ are true.

**631 BROWN ET AL. vs. CIRCUIT JUDGE (Houghton), Nos. 14673
and 14674 (two cases), 105 M., 653.**

To set aside an order sustaining a demurrer and dismissing bill filed under Act No. 262, Laws of 1889, as amended by Act No. 137, Laws of 1891, and to compel respondent to proceed with the cases.

Relators in both cases appealed, orders to show cause were issued January 3, 1895, and the questions were considered in the appealed cases, and the writ granted July 2, 1895, with costs against the demurring defendants. Robison vs. Recorder's Court Judge, 59 M., 529 (236); Brown vs. Circuit Judge, 75 M., 274 (723).

632 LE BLANC ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12790½.

To compel respondent to hear an application for a temporary injunction.

Order to show cause denied May 4, 1892.

Upon the face of the papers it appeared that the circuit judge deferred the hearing because of other business, and had set a

time for the hearing, and ordered that notice be given to the defendant.

633 COOT vs. PROBATE JUDGE (Ionia), No. 12918, 93 M., 304.

To compel respondent to hear relator's petition for the termination of the guardianship over his estate.

Granted October 12, 1892, without costs.

Relator had been adjudged incompetent, and filed his petition praying that the order might be set aside, on the ground that it was void for jurisdictional defects appearing upon the face of the proceedings; that he never was incompetent, and that the petition itself does not show a cause of incompetency.

Held, that mandamus would not lie to set aside the order because of the alleged jurisdictional defects, but that the writ is a proper remedy to compel the court to proceed to a hearing and determination as to present competency. The petition was held sufficient for that purpose, and the writ was issued directing respondent to proceed to a hearing and determination as to the present competency of the relator, to have charge and control of his property.

634 AUDITOR GENERAL vs. CIRCUIT JUDGE (Roscommon), No. 12571.

To compel respondent to hear and determine amount due for taxes on certain lands and enter a decree therefor.

Granted March 9, 1892.

The objection made was that the paper in which publication had been made was not a newspaper published in the county, within the statute. It appeared that the newspaper was published as the Roscommon Democrat; that its office was in that county, and that the papers, although printed elsewhere, came to the office in bulk, and were addressed and distributed through the postoffice at that place.

635 WARNER vs. CIRCUIT COURT COMMISSIONER (Wayne), 37 M., 473.

To compel respondent to proceed on an order of reference tendered to him for execution in a foreclosure case.

Granted October 24, 1877.

Held, that a reference to ascertain the amount due under a mortgage, or any other interlocutory reference in a case not instituted for an accounting, is not within Act No. 96, Laws of 1877, requiring reference to a commissioner who has been designated as injunction master.

636 HARDY vs. CIRCUIT JUDGE (Saginaw), No. 15925½.

Certiorari to Saginaw.

To compel respondent to hear and pass upon an application for mandamus to compel a probate judge to proceed, at the instance of an heir, with an examination of a person who is suspected of having assets in his hands belonging to an estate, the respondent having denied the application on the sole ground that he had no power to issue the writ to a probate judge.

Granted December 4, 1896.

637 GORHAM (Assignee) vs. CIRCUIT JUDGE (Ingham), No. 14258½.

To require respondent to entertain jurisdiction of a bill filed by an assignee, to reach certain lands situate in the County of Ingham, alleged to have been conveyed away by the assignors, without consideration and in fraud of creditors.

Denied June 26, 1894. On re-hearing granted April 2, 1895.

The circuit judge refused to act, upon the ground that the assignment was filed with the clerk of the Circuit Court for the County of Montcalm, and that the Circuit Court of that county, having been thereby vested with supervisory control over all matters arising under the assignment, had exclusive jurisdiction.

The application was denied when first presented, but the question was afterwards raised upon a plea to the jurisdiction (See Chapin vs. Circuit Judge, No. 541), a rehearing was then ordered, upon which the writ was granted.

638 PALMER (Drain Comr.) vs. PROBATE JUDGE (Ionia), No. 14710, 105 M., 86. (Certiorari to Ionia.)

To compel respondent to consider, upon its merits, a motion to set aside the verdict of a jury, finding that there was no necessity for the proposed drain.

The circuit judge granted the writ. Reversed and order vacated April 16, 1895, with costs.

639 PETRIE vs. CIRCUIT JUDGE (Muskegon), No. 13840, 98 M., 130.

To compel respondent to proceed with the hearing of a second accounting, pending an appeal from the first.

Denied December 8, 1893, with costs.

Held, that relators should have applied to the Supreme Court for authority to have the hearing proceed under Sec. 6739, How. Stat., which stays all proceedings in the lower court after perfection of an appeal.

640 FRANK vs. CIRCUIT JUDGE (Wayne), No. 14655.

To require respondent to proceed to a hearing upon a petition filed by claimant and appellant, in a cause appealed from the report of commissioners on claims in the Probate Court, alleging that the written statement of her claim as presented to the commissioners on claims was lost, and praying that it be restored, and that a time and place be fixed by the court for the taking of testimony to establish the fact of loss and the authenticity of the copy produced by petitioner.

Granted February 26, 1895, with costs payable out of the estate.

The loss was not discovered until after a verdict for plaintiff upon a motion for a new trial. A copy of the lost paper was used upon the trial and the witnesses were examined and cross-examined thereupon. A new trial was denied and a bill of exceptions is in course of preparation.

Counsel for the estate contended (1) that there was no showing that the paper had ever been on file in the Circuit Court, hence there was no power in the Circuit to supply or restore it; (2) that there is no law requiring, or practice authorizing, the filing of a written claim with commissioners, and if filed, the commissioners were not required to return it with their report and if returned, the Probate Court was not required to certify it to the Circuit on appeal, and (3) if any power existed to restore or supply the lost paper, it was in the Probate Court and not in the Circuit.

Counsel for relator insisted that such a petition is the proper practice in such a case, *Russell vs. Lillye*, 90 Ill., 327; *People vs. Cozoles*, 27 Colo., 522; *State vs. Harrison*, 18 Tenn., 541; *Bauer vs. Wasson*, 60 M., 194; that the commission is a separate tribunal and acts judicially; that it is no part of the Probate Court and that court has no control over the commission or of the claims, except to order payment where allowed and not appealed from; that an appeal lies not to the Probate Court but to the Circuit; that when the return is made the commissioners are *functus officio*; that an appeal is a statutory right and no order of the Probate Court allowing it is necessary; *Lothrop vs. Conely*, 39 M., 757; *Shurbun vs. Hooper*, 40 M., 503; *Clark vs. Davis*, 32 M., 154; *Streeter vs. Paton*, 7 M., 341; *Fish vs. Morse*, 8 M., 34; *Fox vs. Probate Judge*, 48 M., 643 (133); that the issue on appeal is the same as the one before the commissioners; it is fixed by the original form of the claim and pleadings cannot change it; any variance is jurisdictional, *Patrick vs. Howard*, 47 M., 40; *Hatheway's appeal*, 46 M., 326; *Kroll vs. Ten Eyck*, 48 M., 230; *Comstock vs. Smith*, 26 M., 321; *White vs. Allen*, 18 M., 193; *Weyburn vs. Kipp*, 63 M., 79; *McGee vs. McDonald*, 66 M., 628; *McHugh vs. Dowd*, 86 M., 412; *Grimm vs. Taylor*, 96 M., 5; *Cheever's Probate Law* (3 Ed.), p. 296; that while the statute does not in express terms require a claim to be in writing, yet such has been the practice and on appeal the claims accompany the return; *McKinney vs. Hamilton*, 53 M., 496, and cases last cited; that acts for restoring lost records are remedial, must receive a liberal construction and made to apply to all cases which by a fair interpretation they can be made to reach, *Smith vs. Stevens*, 82 Ill., 566; that Circuit Courts have have inherent power to substitute and restore lost records, 1 Black on Judgments, Sec. 125; *Freeman on Judgments*, Sec. 89; *McLinden vs. Jones*,

8 Ala., 298; 42 Am. Dec., 640; George vs. Middough, 62 Mo., 549; Welch vs. Smith, 4 So. Rep., 340; Chichester vs. Cande, 6 Cow. (N. Y.), 40; White vs. Lovejoy, 8 Johns (N. Y.), 443; Burkel vs. Luce, 1 N. Y., 163; Jackson vs. Hammond, 1 Caine (N. Y.), 496; Bauer vs. Wasson, 60 M., 194; that the appeal being direct from the commissioners the Probate Court has no means, power, authority or machinery to return the lost paper; it is simply the medium through which the appeal is perfected. Brown vs. Forsche, 43 M., 492.

641 THOMPSON vs. CIRCUIT JUDGE (Shlawassee), 54 M., 236.

To proceed to a hearing in a divorce case upon an affidavit of publication.

Denied June 18, 1884, on the ground that the affidavit for publication was defective.

642 ADAMS vs. CIRCUIT JUDGE (Wayne), No. 13858½, 98 M., 51.

To compel respondent to hold valid an order of publication, and to proceed to hear and determine the cause, where the affidavit of non-residence was made at a late hour Saturday, and the order for publication was obtained early Monday morning.

Granted December 4, 1893, with costs.

643 BENTLEY vs. CIRCUIT JUDGE (Wayne), No. 15842½; 3 D. L. N., 521-686; 69 N. W., 660.

To compel respondent to proceed with the hearing and to decree, in a divorce case, where the bill charged desertion for the statutory period, it appearing at the hearing that defendant was a non-resident of the State, that he did not appear, was not served with process, nor with a copy of the order of publication.

Order to show cause denied October 20, 1896.

Held, that no cause for divorce arose until the two years

elapsed; that at that time defendant had become a non-resident, and hence complainant had not brought herself within Act No. 202, Laws of 1895.

A rehearing was applied for, calling attention to the fact that the bill alleged, and the proofs so far as taken tended to establish non-support as well as desertion, and that the cause for divorce arose while defendant resided in this State, whereupon the writ was granted December 24, 1896.

644 VAUGHN vs. CIRCUIT JUDGE (Genesee), No. 16007½.

To compel respondent to proceed to a hearing upon a bill filed for divorce, where the order of publication was served upon the defendant at Seattle, Washington, and the respondent refused to hear the cause on the ground that Act No. 202, Laws of 1895, required such service to be made in Michigan.

Peremptory order granted December 24, 1896.

645 DALY vs. CIRCUIT JUDGE (Wayne), No. 14990½.

To compel one of the judges of the Wayne Circuit Court to proceed to a hearing and determination upon a petition filed by relator for the custody of her child, such custody having been awarded to relator's former husband upon a decree of divorce granted to the husband by one of the circuit judges, who was at the time of the application temporarily absent from the city.

Order to show cause denied July 9, 1895.

646 FITZPATRICK vs. CIRCUIT JUDGE (Wayne), No. 16073.

To compel respondent to sign a decree, where the return shows that the case has been but partially heard.

Denied, with costs, February 17, 1897.

647 WILSON ET AL. vs. CIRCUIT JUDGE (Jackson), No. 12804.

To compel the determination of a cause, and the rendition of a decree.

Granted in the alternative May 10, 1892.

It appeared that over three years had elapsed after the submission of the cause.

648 TURNBULL vs. CIRCUIT JUDGE (Wayne), No. 15630½.

To compel respondent to sign and enter a decree in a chancery cause in accordance with the oral decision of the respondent.

Order to show cause denied May 26, 1896.

In the oral announcement the court had allowed relator a given sum with interest from a given date. Upon the presentation of the decree, counsel for the adverse party objected to the allowance of interest, and after hearing the parties the court struck out the clause respecting interest.

649 CHESEBRO vs. CIRCUIT JUDGE (Kent), 70 M., 650.

To compel entry of a final decree in a chancery suit.

Denied April 17, 1888.

It did not satisfactorily appear that relator had moved the court below, prior to filing his application for the writ.

Held, that such a motion is an essential prerequisite to the relief sought.

It further appeared that the judge was willing to enter the decree. Held, that the court will not enter into a consideration of the merits of the issues involved in a chancery case upon application for mandamus.

650 ENGEL vs. CIRCUIT JUDGE (Wayne), No. 11727.

To compel respondent to settle, sign and enter a decree.

Denied February 21, 1891, without prejudice.

Respondent had announced his conclusions granting relator a decree of divorce on his cross-bill, denying alimony to complainant, but stating that relator should pay to complainant the sum of \$350 as solicitors' fees. Complainant filed her claim of appeal. Relator applied for the settlement of the decree, but both court and stenographer were then engaged in the trial of a cause which it would take six weeks to complete. The stenographer's time was wholly occupied with the trial, and he reported that it would take at least two months' time, after the conclusion of the trial then on, to transcribe his minutes in the divorce case.

651 BRANT vs. CIRCUIT JUDGE (Berrien), No. 13558½.

To compel respondent to enter judgment in favor of relator.

Order to show cause denied June 6, 1893.

Relator was respondent in proceedings before a circuit court commissioner for forcible entry and detainer, in which an appeal was taken to the circuit. Upon the trial in the Circuit Court, before the case went to the jury, relator raised a question as to the competency of one of the jurors, the court found said juror incompetent, and as relator refused to consent to proceed with eleven jurors, the court discharged the panel.

652 BUCK vs. CIRCUIT JUDGE (Washtenaw), No. 13893½.

To compel respondent to render judgment in a replevin suit, as in case of non-suit, for failure to notice the cause for trial, under How. Stat., Sec. 8340, where plaintiff had noticed the cause for the first term, but it had not been reached; had noticed it for the next term, but had countermanded the notice, and

the cause had been stricken from the docket, at plaintiff's instance, for the next term because of defective notice given by defendant.

Order to show cause denied December 12, 1893.

653 SINNOCK ET AL. vs. CIRCUIT JUDGE (Wayne), No. 13789, 97 M., 475.

To compel the assessment of damages in a case where default was taken and made absolute for want of a plea, and the court sustained the objection to the assessment of damages, on the ground that the notice therefor was not given fourteen days before commencement of the term of court, at which said assessment was to be made.

Granted November 10, 1893, with costs against the defendant in the principal suit.

654 STACK ET AL. vs. SMITH (Justice of the Peace), 54 M., 238.

To compel respondent to take testimony as to value and enter judgment therefor in favor of defendant, in a replevin suit which was discontinued by plaintiff on the adjourned day, defendant not appearing.

Denied June 17, 1884.

Held, that if relator had appeared at the time and elected to take judgment for the value, he would have been entitled to it, but he could not appear afterwards and demand such judgment.

655 TAYLOR vs. TRIPP (Justice of the Peace), 15 M., 517.

To compel respondent, where judgment on discontinuance in replevin was rendered against plaintiff, and defendant waived return of the property, to assess defendant's damages.

Granted July 9, 1867.

656 PARSELL vs. CIRCUIT JUDGE (Genesee), 39 M., 542.

To compel an assessment of damages in a replevin suit, where the writ was quashed because it did not describe the goods taken, the only description being in an affidavit annexed.

Denied October 31, 1878.

657 JOHNSON vs. DICK (Justice of the Peace) ET AL., 69 M., 108.

To compel assessment of damages in replevin, in a case where the property was taken on the writ, but for want of service, the justice dismissed the proceedings.

Granted March 2, 1888.

Taylor vs. Tripp, 15 M., 517 (655); Forbes vs. Circuit Judge, 23 M., 496 (659); La Barr vs. Osborn, 38 M., 313 (630); Humphrey vs. Bayn, 45 M., 565.

658 WILLING vs. CIRCUIT JUDGE (Jackson), 1 Doug., 302.

To compel respondent to impanel a jury to assess the value of property replevined on process from Justice Court, where plaintiff had recovered judgment which was reversed by the Circuit Court on certiorari, and at the next term after the reversal of the judgment defendant moved the Circuit Court for an order that a jury be impaneled to assess plaintiff's damages.

Denied 1844.

Held, that the Circuit Court had no such power as the mandamus would command it to exercise; that the Circuit Court would have power to award a restitution of the property; that the motion for assessment was made too late, and that the refusal of the Circuit Court to grant a motion for the assessment of damages by a jury, was not a proper foundation for the application to this court for a mandamus commanding the Circuit Court to impanel a jury to assess the value of the property replevined

659 FORBES vs. CIRCUIT JUDGE (Washtenaw), 23 M., 496.

To compel respondent to assess the value of property taken on replevin, where the service had been set aside and defendant had elected to waive the return.

Granted October 18, 1871.

660 LA BARR vs. OSBORNE (Justice), 38 M., 313.

To compel respondent to receive evidence to prove value in case of the dismissal of a writ of replevin, where defendant waives the return of the property.

Granted January 30, 1878. Taylor vs. Tripp, 15 M., 517 (655).

Held, that costs will not be granted against a party interested who has not been brought before this court by notice, in such a case.

661 WIRTH vs. JOHNSON (Justice), No. 12695.

To compel a justice of the peace, in a replevin case, to enter upon his docket defendant's waiver of a return of the property and a judgment for its value, instead of a judgment for return of the property.

Plaintiff's suit was dismissed, and the justice's docket shows a judgment for the return of the property, and the justice answers that defendant did not elect to waive the return until after the rendition of the judgment.

Order granted in alternative April 5, 1892. Answer filed April 30. Further return was ordered May 6, 1892, and filed May 17, 1892, after which nothing further was done.

662 LICHTENBERG ET AL. vs. CIRCUIT JUDGE (Wayne), No. 14919, 106 M., 38.

To compel entry of judgment for relators, as principal defendants, upon certiorari to a Justice Court in the garnishment proceedings, where the garnishee defendants had appealed.

Denied July 2, 1895, with costs.

One Shrikel sued relators in Justice Court and obtained judgment. Plaintiff then garnished the First National Bank and obtained judgment against the bank. The bank appealed to the circuit, under Act No. 173, Laws of 1891. Relators sued out a writ of certiorari to review the same proceedings. The Circuit Court rendered a judgment in favor of the garnishee defendant in the appeal case, upon errors specially alleged, and, although the affidavit for the writ of certiorari contained the same and other allegations of error, the Circuit Court refused to enter judgment in the certiorari proceedings. Relators insist that they have a right to a formal judgment and to costs.

663 WAGNER vs. CIRCUIT JUDGE (Calhoun), No. 14445.

To vacate an order made in a case appealed from the Probate Court denying a motion to set aside, for alleged want of jurisdiction, proceedings had in said Probate Court adjudging relator to be an incompetent person and appointing a guardian.

Denied October 30, 1894, with costs.

Two daughters of the relator, in October, 1893, filed a petition in the Probate Court setting forth that relator was mentally incompetent to have the care and custody of his person and estate and praying for the appointment of a guardian. The application was strenuously resisted and a mass of testimony was taken. Pending this proceeding, an order was entered on February 10, 1894, by consent of all parties, suspending the hearing and requiring the alleged incompetent to observe certain injunctions, evidently designed for his protection against designing persons, and the protection of all parties concerned.

The order, however, provided that "if the foregoing conditions are complied with, then further proceedings shall be suspended, otherwise they may be continued upon proper application by the said petitioners."

On April 9, 1894, petitioners filed a petition setting forth that the requirements of the aforesaid order had not been complied with, and asking that relator be cited to appear and the proceedings for the appointment of a guardian "may proceed and be concluded."

It was conceded that the court acquired jurisdiction under the first petition, and that all parties interested were properly notified of the proceedings under the second petition and appeared therein.

A guardian was finally appointed and relator's contention is that the Probate Court lost jurisdiction under the first petition by the entry of the order of February 10, and the suspension of the hearing, and that the second petition did not contain the necessary averments to confer jurisdiction.

The circuit judge held that the order and adjournment of the matter without day did not divest the court of jurisdiction, and that proceedings under the second petition were a continuation of those instituted by the original petition.

664 DODSLEY (Admr.) vs. PROBATE JUDGE (Wayne), No. 12515½.

To compel respondent to confirm a sale of certain real estate under a license.

Granted February 3, 1892, without costs.

The statute requires publication for six weeks successively next before such sale. The sale was set for January 20, 1892. The publications were December 7, 16, 23 and 30, and January 6 and 13.

It was insisted that the publications should have been made on the same day of the week.

Relator cited *Snyder vs. Hemingway*, 47 M., 553; *Wilkinson vs. Conaty*, 65 M., 614.

665 McLAUGHLIN ET AL. vs. CIRCUIT JUDGE (Wayne), 57 M., 35.

To vacate an order, made in a partition case, confirming the report of commissioners appointed therein and to set aside such report, for the reason that the commissioners proceeded without giving notice to complainants or their solicitors, but were attended by the solicitor for some of the defendants, who were tenants in common of the land, that such solicitor directed the commissioners in what manner to proceed, and prepared the report which they signed and filed.

Granted May 13, 1895.

666 GREUSEL vs. CIRCUIT JUDGE (Wayne), No. 11750½.

To compel respondent to confirm a commissioner's report.

Order to show cause denied February 10, 1891.

Upon bill for partition, the court had made a decree ordering a sale, and directing that the costs of complainant and of the guardian ad litem, and their expenses, be first deducted from the proceeds of the sale, and referred it to a commissioner to inquire and report the expenses of complainant and the guardian ad litem over and above their taxable costs.

The commissioner reported that the bills presented by the several solicitors, were, in his opinion, just and reasonable, and that the services rendered were necessary in the cause. The circuit judge, on exceptions filed, reduced the amount of the bills, presented, and it was held that the matter of costs, over and above those provided by statute, were within the discretion of the court.

667 FIRST NATIONAL BANK vs. CIRCUIT JUDGE (Wayne), 18 M., 483.

To compel vacation of an order setting aside the report of a referee and entry of judgment on the report.

Granted May 13, 1869.

Respondent had set aside the report on the ground that it was against the weight of evidence, which the court held that it had no power to do. As the question was a new one no costs were imposed.

668 WINTON vs. CIRCUIT JUDGE (Gratiot), No. 13756.

To compel respondent to certify to the Probate Court a judgment in replevin for the value of the property, return having been waived, in a case where relator, as administrator, was plaintiff.

Denied November 1, 1893, with costs.

Relator had sold the lumber before trial under a stipulation entered into in open court which was as follows: "By consent of the attorneys in open court it is agreed that the administrator shall sell the lumber, it being in danger of spoiling, and retain the proceeds to abide the judgment of the court."

669 EVANS vs. CIRCUIT JUDGE (Saginaw), 39 M., 123.

To vacate an order setting aside a default.

Denied June 19, 1878.

Discretion is not reviewable on mandamus.

670 WALSH vs. CIRCUIT JUDGE (Wayne), 76 M., 470; 5 L. R. A., 858.

To set aside an order denying a motion to set aside a default, and for leave to plead or demur.

Denied October 16, 1889, without prejudice.

The circuit judge denied the motion, on the ground that defendants had not complied with the rules, by filing an affidavit of merits, pleading issuably, and tendering the costs of the default.

671 VAN AIKEN vs. CIRCUIT JUDGE (Lenawee), No. 11724½.

To set aside a default, taken on failure to answer within the time fixed upon overruling demurrer.

Order to show cause denied February 10, 1891.

Relator appealed from order overruling demurrer. Decree affirmed, 77 M., 588, and twenty days given to answer. Relator defaulted for want of answer.

672 BURT vs. CIRCUIT JUDGE (Wayne), No. 12558, 90 M., 520.

To set aside default entered for want of replication to a notice of matter of defense, filed under Circuit Court Rule No. 106.

Granted March 9, 1892, with costs.

673 COACH vs. CIRCUIT JUDGE (Kent), No. 13785, 97 M., 563.

To vacate an order setting aside a default which had been entered upon the failure of complainant to answer defendant's claim, set up in his answer, for affirmative relief, except by replication in the usual form, which the circuit judge held to be a sufficient answer.

Granted November 24, 1893, without costs.

674 MALNAR vs. CIRCUIT JUDGE (Keeweenaw), No. 14304½.

To vacate an order setting aside a default, in a log lien case, and directing plaintiff to furnish a bill of particulars.

Order to show cause denied July 17, 1894.

Defendant had demanded a bill of particulars, but plaintiff did not furnish same, but defaulted defendant for want of plea, insisting that plaintiff was not required to furnish a bill of particulars in such case.

Mason vs. School Dist., 34 M., 228; Demars vs. Conrad, 73 M. 152; Hamilton vs. Circuit Judge, 84 M., 395 (330).

675 VAILANT vs. CIRCUIT JUDGE (Keweenaw), No. 14481.

676 MALNAR vs. CIRCUIT JUDGE (Keweenaw), No. 14480.

To vacate orders setting aside defaults taken by plaintiffs for want of pleas.

Denied November 21, 1894, with costs.

Plaintiffs had ignored defendants' demands for bills of particulars, had taken their defaults, which had been set aside, and plaintiffs were ordered to furnish such bills. Plaintiffs then furnished bills of particulars which defendants regarded as insufficient, and so notified plaintiffs' attorney.

Defendants neglected to plead and plaintiffs entered defaults the second time.

Defendants then moved that plaintiffs be non-suited for failure to furnish bills of particulars. The court, upon that hearing, determined that the bills were insufficient, set aside the defaults and ordered further bills to be furnished, and it is of this action that relators complain.

677 HAKE vs. CIRCUIT JUDGE (Kent), No. 13994, 99 M., 216.

To compel respondent to vacate an order setting aside a default, which was entered in a case commenced by filing a declaration and entering rule to plead, after a plea to the jurisdiction had been filed, but not within the ten days provided for by Circuit Court Rule No. 24.

Denied February 27, 1894, with costs.

Held, that the rule relied upon applies only to cases commenced by original writ. Wyandotte Rolling Mills Co. vs. Robinson, 34 M., 428.

678 BIGELOW vs. CIRCUIT JUDGE (Gratiot), No. 14732½.

To compel respondent to vacate an order setting aside a default for want of answer to an amended bill, and also an order permitting a party, acquiring title since the filing of the bill, to intervene and answer.

Denied March 7, 1895.

679 SEEL vs. CIRCUIT JUDGE (Berrien), No. 12327.

To set aside default and judgment, where, after relator's default, he moved to set aside same, and the court granted the motion upon payment, within a time specified, of \$25. Payment was not made. After default absolute, judgment, issue of execution and bill filed in aid thereof, relator made this application.

Denied November 10, 1891, with costs.

680 JAMES CUNNINGHAM & SONS CO. vs. CIRCUIT JUDGE (Wayne), No. 13799.

To vacate an order setting aside a judgment by default, entered for want of appearance and plea.

Denied November 15, 1893, with costs.

Respondent contended (1) that the affidavit served with plaintiff's declaration is fatally defective, because it is not stated therein that the amount due is "over and above all legal set-offs;" (2) that the first default was entered August 26, 1893, and the default absolute and judgment, August 31, 1893, and as August 27 was Sunday, the default absolute and judgment were entered one day too soon; that where a rule or statute requires a certain number of intervening days, the same being less than the week, Sunday is excluded; *Drake vs. Andrews*, 2 M., 203; *Simonson vs. Durfee*, 50 M., 81; and (3) that defendant had explained and excused his failure to plead seasonably, to the satisfaction of the circuit judge. Relator contended that Sunday was properly excluded, citing *Corey vs. Hiliker*, 15 M., 314; *Anderson vs. Baughman*, 6 M., 298; *Harrison vs. Sager*, 27 M., 476; *Dale vs. Lavigne*, 31 M., 149.

**681 KRITZER MILLING CO. vs. CIRCUIT JUDGE (Newaygo),
No. 15844.**

To set aside a judgment taken on default, because (1) the return set forth that the declaration was served upon "Chas. C. Kritzer, as president;" (2) there is a material variance between the note upon which the judgment was entered and the copy appended to the declaration, in that the former reads "on demand, after date," and the latter "on demand, after due;" (3) there was no evidence offered showing that plaintiff was a corporation, or that defendant was a corporation; (4) the note was signed "Kritzer Milling Co. By Chas. C. Kritzer, president," and there was no evidence offered tending to show that Kritzer was authorized to sign the note.

Denied December 21, 1896, with costs.

The answer denied the statements as to the absence of evidence upon the last two points.

Respondent insisted that as to them the answer was conclusive; that one term had intervened after judgment and before the motion was made; that error and not mandamus is relator's remedy; that, as to the return, the case is governed by *Grand Rapids Chair Co. vs. Runnels*, 77 M., 104; that a default for not pleading admits plaintiff's demand, 1 *Green's Pr.*, 194-458; *Granger vs. Superior Court Judge*, 44 M., 384 (715); *Howe vs. Maltz*, 35 M., 499; 5 *Am. & Eng. Enc. of Law*, 491-644; and that mandamus will not lie to interfere with the exercise of discretion unless there is a palpable abuse, *Dibble vs. Rogers*, 2 M., 404; *Railway Co. vs. Circuit Judge*, 89 M., 551 (900); *Aetna L. S. & T. Co. vs. Circuit Judge*, 20 M., 220 (862); *Shimer vs. Circuit Judge*, 17 M., 67 (860).

**682 CAMPBELL vs. CIRCUIT JUDGE (Wayne), No. 15845; 69 N. W.,
514; 3 D. L. N., 635.**

To vacate a default judgment, on the application of one of several defendants, where the affidavit of service alleges that affiant served the declaration on the defendants, named in the declaration, by delivering to "said defendants" a true copy thereof, and the showing made by relator, in the court below and here, is that

the declaration was not served upon relator nor was any notice given him of the subsequent proceedings.

Granted December 18, 1896, with costs.

683 REYNOLDS ET AL. vs. CIRCUIT JUDGE (Wayne), No. 13569.

To set aside a judgment taken on default, in a case appealed from a circuit court commissioner.

Granted June 14, 1893, with costs.

The return was filed in September, 1892, and the case was noticed for trial for the June term 1893, and placed on the docket.

Relator was the appellant, and alleges in his petition that his appearance was entered in the proceeding before the circuit court commissioner, and the commissioner returns that such was the fact. Default was taken for want of appearance, and for failure to prosecute the appeal. The case was taken up out of its order on the docket, and assigned without notice to appellant, and plaintiff at once proceeded to judgment.

684 BERLES vs. CIRCUIT JUDGE (Kent), No. 14433, 102 M., 495.

To set aside relator's default entered in a garnishee suit, because of her refusal to submit to an examination as to transfers of property made to her by her husband, it appearing that her husband objected thereto.

Granted November 20, 1894, with costs, on the ground that the 3 How. Stat., Sec. 7546, is applicable to such a case.

685 RANKANS vs. CIRCUIT JUDGE (Ottawa), No. 13547, 97 M., 623.

To set aside default and judgment and allow relator to plead.

Granted June 14, 1893, with costs.

Plaintiff, a non-resident, commenced suit February 8, 1893,

by declaration, against relator, but failed to endorse security for costs. Narr served February 13, 1893. February 18, 1893, relator appeared specially and moved to strike narr from files. The first court day thereafter was March 13, 1893.

In the meantime, on March 9, 1893, plaintiff filed the requisite security. The motion to strike from the files was denied, on the ground that the security had been filed, but defendants were allowed a motion fee. Plaintiff immediately paid the motion fee, and on the same day entered defendant's default for want of appearance and plea.

On March 18, default absolute was entered and judgment taken. On March 20, defendant moved to vacate default and judgment, on the ground (1) that no affidavit of non-appearance or of non-service of plea had been filed by plaintiff, and (2) that the default was prematurely entered, as defendant had twenty days after March 13 to appear and plead.

The Circuit Judge held (1) that no affidavit of non-appearance was necessary, citing *Leonard vs. Woodward*, 34 M., 514; *Elliot vs. Farwell*, 44 M., 186; *Bogue vs. Prentis*, 47 M., 124; *Edson vs. LaLonde*, 88 M., 162; and (2) that no order staying proceedings having been obtained by defendant that the twenty days under Circuit Rule 16, continued to run, citing *Knapp vs. Smith*, 7 Wend., 534; and that the practice contended for by defendant is confined to cases of oyer, such as furnishing a bill of particulars, *Knapp vs. Smith*, supra; *Reed vs. Patterson*, 14 Johns., 328; *Brown vs. St. John*, 19 Wend., 617; *Jenkins vs. Bloodgood*, 22 Wend., 645; that defendant might have, on March 13, obtained an order enlarging time to plead, and not having done so, the default could be entered at once, *Anonymous*, 3 Hill, 448; and (3) that the giving of security is not essential to jurisdiction, *Parks vs. Goodwin*, 1 Doug., 56.

Relator contended that the proper course in such case is to move to strike the declaration from the files, *Parks vs. Goodwin*, 1 Doug., 56; that the omission to endorse security was an irregularity, *Bank vs. Jessup*, 19 Wend., 10; that a plea to the merits would have waived the want of endorsement, *Shinn's Pl. & Pr.*, p. 406; that defendant had the right to invoke the statute; and that otherwise a declaration filed in vacation more than twenty days before a session of court, would compel defendant to waive the right; that defendant had at least all of the day upon which the motion to strike was determined, *Porter vs. Hower*, 9 Penn. Co. Ct., 286; that in *Knapp vs. Smith*, 7 Wend., 534, an order for extension of time to plead was set aside and the court held, that as such order was obtained for defendant's convenience, the case stood as if the order of stay had not been made.

686 GIBBS vs. SUPERIOR COURT JUDGE (Detroit), 53 M., 496.

To set aside a judgment of non-suit, which was ordered in an action for slander commenced by *capias*, because plaintiff had failed to comply with an order directing the defendant to file a statement of the particulars of the alleged slander.

Granted, without costs, April 29, 1884.

Held that the facts were given in the affidavits for the writ with abundant fullness, and the court should not have gone beyond limiting plaintiff to the case set out in the affidavits, in case he failed to give further particulars.

687 WINEMAN vs. CIRCUIT JUDGE (Wayne), 35 M., 497.

To set aside a judgment of non-suit, in a case wherein relator was plaintiff, and one Van Baalan and another, were defendants.

Denied January 19, 1877.

A previous non-suit had been set aside upon payment of an attorney fee. The attorney fee was not paid, but defendants noticed the case for trial. At the opening of the term, plaintiff's counsel announced that the case was improperly on the docket, for the reason that plaintiff had not complied with the order setting aside the non-suit, but the court set the case down for trial on a day specified. On that day plaintiff failed to appear, and the second non-suit was entered.

688 WILLIAMS vs. CIRCUIT JUDGE (Ottawa), 79 M., 549.

To compel respondent to set aside a judgment of non-suit, submitted to by plaintiff in ejectment, upon the trial of a suggestion of claim for damages, under How. Stat., Sec. 7830.

Denied February 20, 1890.

Held, that on vacation of a judgment in ejectment, in favor of the plaintiff, his suggestion of a claim for damages made and filed under How. Stat., Sec. 7830, dies with that judgment, and

that the judgment referred to in said section, which provides for the filing by plaintiff in ejectment of a suggestion of a claim for damages, is the final judgment in the cause, which does not relate back to any other judgment recovered by the plaintiff.

689 CUMMINS vs. CIRCUIT JUDGE (Muskegon), No. 15847½.

To set aside a non-suit which was entered because plaintiff, in a suit against a railway company for damages, occasioned by fire from defendant's right of way, had failed to file or serve a bill of particulars, which had been demanded.

Order to show cause denied October 6, 1896.

Relator contended that inasmuch as the declaration was special, defendant was not entitled to a bill of particulars. Citing

Everett vs. Circuit Judge, 39 M., 437 (332). Kehrig vs. Peters, 41 M., 475; Shadock vs. Plank Road Co., 79 M., 9; Van Vranken vs. Circuit Judge, 85 M., 140 (328).

690 CITY OF DETROIT vs. CIRCUIT JUDGE (Wayne), No. 15365.

To vacate an order made September 23, 1895, entering a judgment nunc pro tunc, without notice or consent, on a verdict rendered March 12, 1894, in an action of tort, the effect of which was to cut off the adverse parties' right of appeal and enable plaintiff to collect interest on his judgment from the date of the verdict.

Granted February 25, 1896, with costs against plaintiff.

691 GILLESPIE ET AL. vs. CIRCUIT JUDGE (Wayne), No. 11729.

To vacate an order reducing a verdict, where relators in an action for interference, by their landlord, with their possession of certain premises, had a verdict for \$1,000, and upon a motion for a new trial, the court denied the motion, but reduced the

verdict to \$500, and, pending the present application, set aside the order complained of and granted a new trial.

Denied January 22, 1891, without costs.

692 RYAN vs. CIRCUIT JUDGE (Wayne), No. 14741½.

To compel respondent to set aside a verdict and enter judgment for plaintiff, because the verdict rendered is inconsistent with the answer to a special question submitted.

Order to show cause denied February 26, 1895, relator's remedy being by writ of error.

693 GRAHAM vs. CIRCUIT JUDGE (Montcalm), 62 M., 147.

To vacate an order setting aside a judgment of discontinuance, in a case commenced in Montcalm County, by residents of that county, against the sheriff of Clare County, to recover the value of a stock of goods owned by merchants doing business in Clare County, which was seized by the sheriff under writs of attachment sued out by creditors, and upon which stock plaintiffs held a chattel mortgage.

Granted January 24, 1886..

Upon the trial, after plaintiffs had rested their case, counsel for the sheriff insisted that as the property was, at the time of the seizure, in Clare County; and the sheriff seized the property as sheriff of that county under process issued out of the Circuit Court of that county, the action in Montcalm County was prohibited, under How. Stat., Sec. 7549.

The trial court held the point well taken, discharged the jury and entered judgment of discontinuance. Afterwards the court, upon motion, set aside the judgment so entered.

694 HILSINGER vs. CIRCUIT JUDGE (Oakland), No. 16197.

To vacate an order vacating a judgment rendered by a justice of the peace, for the value of property taken in replevin, upon transcript filed in the Circuit Court, perpetually staying proceedings in said cause, granting the plaintiff, in replevin, leave to appeal from the judgment rendered by the justice, and giving costs against relator.

Granted with costs against plaintiff, March, 1897.

Lathers brought replevin against relator before a justice and the property was taken under the writ. On the return day, August 31, 1896, Lathers not appearing, relator waived the return and took judgment for the value. After execution returned not satisfied, relator took and filed in the Circuit Court a transcript, and an execution was thereupon issued January 22, 1897. On February 5th, 1897, Lathers moved to vacate the judgment and for leave to appeal.

695 LAMBERTON vs. FOOT (Justice), 1 Doug., 102.

To compel the entry of a verdict rendered by the jury in a replevin case, where the verdict was "this jury find for the plaintiff" and the justice refused to enter the same, because he regarded the verdict as insufficient.

Granted 1843.

696 ELLISON vs. CIRCUIT JUDGE (Marquette), 41 M., 222.

To compel the entry of a certain judgment on a verdict.

Denied June 18, 1879.

Relator sued E. S. and F. on a partnership note of E. and S., payable to relator or order, upon the back of which F. had written his name. E. and S. were defaulted and reference was made to the clerk to assess damages against them. F. appeared, pleaded and went to trial. The jury found for the plaintiff

against F. and assessed the damages without including E. and S. After the discharge of the jury, plaintiff moved that the verdict be amended to show an assessment against all of the defendants, and for judgment thereon. This was refused and plaintiff then moved for judgment against F. alone, on the ground that the action had become severed under the statute. This was also refused, and relator asks for a mandamus to grant one application or the other.

Held, that relator would be entitled to judgment upon assessment against E. and S., and the verdict against F. taken together, and suggested that such judgment should recite that it was rendered upon such assessment and verdict.

697 WILSON vs. CIRCUIT JUDGE (Wayne), No. 15367.

To vacate a judgment for the value, in a replevin suit appealed from a Justice Court, the plaintiff not appearing when the cause was reached upon call of the docket.

Denied February 19, 1896, with costs.

Relator insisted that the order allowing an appeal was made upon an ex parte application; that the cause was not properly upon the docket for the term, and that the form of the judgment was changed, after the original entry thereof, upon an ex parte application, but these questions were all fully considered upon an application made by relator for a new trial, which was denied.

698 BRASSEL vs. CIRCUIT JUDGE (Delta), No. 15688½.

To vacate an order setting aside a verdict for plaintiff and entering a judgment of no cause of action, and to enter a judgment on the verdict.

Order to show cause denied, on the ground that relator's remedy is by appeal. May 5, 1896.

699 SCHOOL DISTRICT vs. CIRCUIT JUDGE (Ingham), 49 M., 432.

Mandamus will not lie to compel a circuit judge to overrule his finding that the proceedings taken for the condemnation of a site for a schoolhouse were irregular, and to compel him to enter judgment for the amount found due.

Denied October 31, 1882.

700 FORT WAYNE & BELLE ISLE RY. CO. vs. CIRCUIT JUDGE (Wayne), No. 15516; 68 N. W., 115; 3 D. L. N., 369.

To vacate an order made by the court on its own motion setting aside a verdict, because deemed inadequate, in an action brought against relator for personal injuries.

Denied July 21, 1896, with costs, on the ground that the court has power, in cases other than those where the error is that of the court, or where there is misconduct of the jury, to set aside a verdict on its own motion, and an abuse of discretion is not shown.

701 ORR vs. CIRCUIT JUDGE (Wayne), 23 M., 536.

To compel respondent to set aside a judgment rendered upon a trial by the court, without a jury.

Denied October 24, 1871.

Held, that where a circuit judge is called upon to show cause against a mandamus, his return stating the facts as to his own action and what occurred in connection therewith, within his own knowledge, must be conclusively taken to be true, and an issue of fact will not be allowed to be made upon it.

**702 JOHNSON ET AL. vs. CIRCUIT JUDGE (Presque Isle),
No. 15234½.**

To vacate order holding that in the answer to a petition for sale of land for delinquent taxes, there are no specific allegations sufficient to raise an issue.

Order to show cause denied November 10, 1895.

**703 WYNKOOP vs. CIRCUIT JUDGE (Grand Traverse), No. 16277,
4 D. L. N., 330.**

To set aside a decree entered for the sale of lands delinquent for taxes of 1892, it being claimed that the affidavit of publication did not confer jurisdiction, because, (1) although sworn to, it is not signed by the affiant; (2) it does not state that the paper is a paper circulated in the county where the lands are situate, and (3) it does not state that the order of the court and the petition of the auditor general were ever published, as required by law.

Denied with costs, June 7, 1897.

**704 COIT ET AL. vs. SUPERIOR COURT JUDGE (Grand Rapids),
No. 15618½.**

To vacate an order setting aside a judgment in a case tried by the court without a jury, where the court's conclusions were announced February 29; a request for findings was filed March 3, and on March 11 the clerk entered in the journal a judgment as of February 29, and at the date of such entry no findings had been made.

Order to show cause denied May 19, 1895.

705 MABLEY vs. SUPERIOR COURT JUDGE (Detroit), 32 M., 189.

To compel respondent to set aside a judgment in garnishee proceedings on the ground of irregularities.

Denied June 8, 1875.

Held, that error and not mandamus is the proper remedy.

706 HILLIAR vs. CIRCUIT JUDGE (Branch), No. 11752.

To compel respondent to vacate an order setting aside a verdict.

Granted February 4, 1891, with costs.

Plaintiff had a verdict in an action for services rendered in building a barn. Respondent held a mortgage upon the premises upon which the barn was built, and, on the sole ground that he was disqualified, of his own motion set aside the verdict.

Held, that the judge was not disqualified.

Relator's counsel cited *Hawes vs. Humphrey*, 9 Pick., 350; *Inhabitants vs. Smith*, 11 Met., 395; *Sjorberg vs. Nordin*, 5 N. W. (Minn.), 677; *Klaise vs. State*, 27 Wis., 463.

707 SLYFIELD ET AL. vs. CIRCUIT JUDGE (Benzle), No. 15138½.

To vacate a judgment entered against relators, because (1) service of the declaration by which suit was commenced was made upon relators by the plaintiff in person, and because, (2) after the first default and before default absolute or judgment, but on the same day that judgment was taken, one, Elmer E. Slyfield, who was made a party defendant in said suit, but who was not served with process, entered his appearance in said suit and filed a plea therein.

Order to show cause denied October 8, 1895, on the ground that error is the proper remedy.

**708 GRAND RAPIDS & IND. R. R. CO. vs. CIRCUIT JUDGE (Osceola),
No. 15486½.**

To vacate an order overruling relators' special appeal from the judgment of a justice of the peace, and to reverse said judgment.

Order to show cause denied March 12, 1896.

709 COREY vs. CIRCUIT JUDGE (Lapeer), No. 12549.

To set aside an order confirming report of commissioners on partition.

Denied March 2, 1892, with costs.

The only question involved was whether the commissioners had fairly and impartially partitioned the property in question.

710 WILEY vs. CIRCUIT JUDGE (Tuscola), No. 12050½.

To compel respondent to reopen a decree for sale of land for delinquent taxes, after sale made in May, 1890, and allow relator to file answer.

Order to show cause denied June 10, 1891.

711 PHELPS vs. CIRCUIT JUDGE (Osceola), No. 15410½.

To vacate an order overruling points raised, on special appeal from a Justice Court, and requiring appellant to go to trial upon the merits.

Order to show cause denied February 18, 1896.

712 MICHIGAN CENTRAL RAILROAD COMPANY vs. PROBATE JUDGE (Tuscola), 48 M., 638.

To vacate an order confirming the report of commissioners, respecting the condemnation of lands in which relator is concerned, on the application of another railroad company.

Granted April 18, 1882.

713 CAHOON vs. CIRCUIT JUDGE (Jackson), No. 12707½.

To arrest judgment.

Order to show cause denied April 12, 1892.

Relator was convicted of assault and battery upon an information, charging an assault with intent to do great bodily harm, less than the crime of murder, and it was insisted he could not be convicted of assault and battery under such an information. See No. 733.

714 FIRE ASSOCIATION OF PHILA. vs. CIRCUIT JUDGE (Iosco), No. 14965½.

To set aside a judgment rendered against relator as garnishee, upon a jury trial, and during which the garnishee defendant insisted that there was no issue for the jury to try, and moved for judgment in its favor.

Order to show cause denied June 18, 1895, on the ground that relator's remedy is by writ of error.

715 GRANGER vs. SUPERIOR COURT JUDGE (Detroit), 44 M., 384.

To vacate a judgment.

Denied October 13, 1880.

Judgment by default is not absolutely void for want of sufficient notice of the rule to plead, where process has been personally served; and if the party suffering judgment neglects to

seek relief against it on error until the other party would have lost his remedy by lapse of time, he cannot then have it vacated by mandamus. Costs not awarded when proceeding brought at respondent's request.

716 GAVIN vs. CIRCUIT JUDGE (Grand Traverse), No. 16362.

To vacate a decree in a foreclosure case, on the ground of want of notice of its entry.

Denied, with costs, June 22, 1897.

The decree was announced in open court October 16, 1896, and originally entered in January, 1897. April 27, 1897, the decree was vacated and entered as of the last named date, saving relator's right of appeal, and proceedings for sale stayed.

717 ORTH (Executrix) vs. CIRCUIT JUDGE (Montcalm), No. 15647½.

To compel respondent to vacate an order dismissing a cause brought by Orth against the village of Carson City, for the destruction of plaintiff's sawmill by fire, caused by the escape of sparks from the smokestack at the village water works; where Orth died pending suit, his death was suggested, the cause revived, and, the case being called up for trial, on motion the same was dismissed for the reason that the action did not survive.

Order to show cause denied June 2, 1896, on the ground that relator's remedy is a writ of error.

718 AUDITOR GENERAL vs. CIRCUIT JUDGE (Iron), No. 15232.

To compel respondent to vacate an order in certain proceedings instituted by the auditor-general, for the sale of certain lands for delinquent taxes, setting aside assessment against certain descriptions for State, county and township taxes.

Denied December 4, 1895.

Relator alleges that the Clerk of the Board of Supervisors, in entering the proceedings of the board, relative to the equalization of taxes by the board, inadvertently omitted to enter upon the record the schedule of additions and deductions made by the board, but, upon the hearing below, relator offered to show that the board had actually made such additions and deductions, and offered to place the table or schedule thereof in evidence; that such schedule had been inadvertently omitted from the record by the clerk, and that the assessment was made upon the basis of equalization in accordance with such schedule, but the court refused to admit such proofs.

The answer denies that any such offer was made and avers that the said taxes are void for other reasons, viz: (1) that in one township the tax roll was placed in the hands of the treasurer before the taxes were extended in the assessment roll; that then, instead of extending the taxes in the original roll, a copy of the original roll was made in the latter part of December, and the taxes extended therein, and hence that the roll in the hands of the supervisor is not the original assessment roll with the original certificates, but is a copy made after the tax roll had left the hands of the supervisor; Sec. 34, Act. No. 206, Laws 1893; *Seymour vs. Peters*, 67 M., 415; *Fowler vs. Campbell*, 100 M., 398; (2) that in another township the warrant of the supervisor attached to the tax roll was not signed by the supervisor, nor by anybody, *Tweed vs. Metcalf*, 4 M., 579; *First Natl. Bank vs. St. Joseph*, 46 M., 526; *Dickison vs. Reynolds*, 48 M., 158; (3) that in two other townships the alleged delinquent returns were made upon separate and distinct loose sheets of paper, written upon both sides, which were not and could not be fastened together so as to be read and understood, and that the statutory affidavits and certificates were attached to one sheet only, *Tweed vs. Metcalf*, supra; *Upton vs. Kennedy*, 36 M., 216; *Seymour vs. Peters*, 67 M., 415; (4) that in another township a comparison of the assessment and tax rolls showed many changes in the assessment roll after it had left the hands of the board of review; that in a number of instances taxable property had been erased or taken off the roll by the supervisor; that in another instance the valuation had been reduced; that in from fifty to one hundred instances the tax roll was not a copy of the assessment roll, but differed in amount and in description; *Weston vs. Monroe*, 84 M., 341; *Ferton vs. Feller*, 33 M., 199; *Clark vs. Axford*, 5 M., 182.

Respondent insisted that the provisions of the statute requiring the determination of the board to be entered of record, are mandatory; *Moser vs. White*, 29 M., 59; *Taymouth vs. Taylor*, 35 M., 21; *Stevenson vs. Bay City*, 26 M., 83; *Thompson vs. School District*, 25 M., 483; *Auditor General vs. Roberts*, 83 M., 471; *Williams vs. Mears*, 61 M., 68; *Yelverton vs. Steele*, 36 M., 62.

**719 MANLEY vs. CIRCUIT JUDGE (Kalamazoo), No. 16391,
4 D. L. N., 648.**

To compel the vacation of a decree.

Denied October 1, 1897.

Held, that an opportunity should be afforded relator to enter into a defense in the case upon the merits, but that no certificate of counsel, such as is required by rule 25, was submitted to the court below upon the application.

The application was therefore denied without prejudice.

720 SHEPPARD vs. CIRCUIT JUDGE (Wayne), No. 15694½.

To vacate an order dismissing relator's bill, filed to compel plaintiff, in a suit commenced by attachment, to release and discharge a levy upon relator's property, on the ground that the same is a homestead worth less than \$1,500, over and above the mortgage thereupon, and it is urged that the mortgage has been foreclosed by advertisement; that the time for redemption expires Oct. 28, 1896; that the levy is a cloud upon her title, which prevents her from effecting a loan upon her property, and unless she can have the matter reviewed by mandamus, she will lose her property.

Order to show cause denied July 1, 1896, on the ground that appeal is the proper remedy.

721 YORK vs. CIRCUIT JUDGE (Ingham), 57 M., 421.

To vacate an order setting aside a decree which had been entered 16 months before.

Granted June 17, 1885.

Held, that the decree in such case could not properly be set aside on mere motion, but the writ was granted without prejudice to the right to proceed in a regular way.

722 LOW ET AL. vs. CIRCUIT JUDGE (Kalamazoo), 61 M., 35.

To compel respondent to set aside an order vacating a decree and all proceedings subsequent to the issue of the subpoena.

Granted in part April 20, 1886.

The return day of the subpoena was of a date thirty days prior to that fixed in the original subpoena, and a decree pro confesso, for want of defendant's appearance, was entered.

Held, that the return was not conclusive against defendants, nor was the service bad, but that the defect was an irregularity, which he could take advantage of by timely application to the court; that the return gave the court jurisdiction; that to constitute an enrollment under How. Stat., Sec. 6648-9, the papers must be attached with the register's certificate annexed, under seal of the court, and filed in his office; that a pro confesso decree, for want of defendant's appearance, may be vacated after enrollment upon petition or motion, otherwise where an appearance has been entered, when a re-examination can only be had on bill of review (Maynard vs. Pereault, 30 M., 160); that relator had failed to show that he was ignorant of the true return day, and made no showing of merits, nor tendered an answer; that in such case, no facts existed authorizing the setting aside of the service or pro confesso, but that an order made vacating the report as to amount due, and the decree, was warranted upon the showing that complainant had not accounted for certain rents and profits.

723 BROWN vs. CIRCUIT JUDGE (Kalamazoo), 75 M., 274; 5 L. R. A., 226.

To require respondent to set aside a decree in a chancery cause tried by a jury under the provisions of Act No. 267, Laws of 1887, and to hear it in the usual manner.

Granted June 14, 1889.

Held, that the act referred to is unconstitutional; that the case

had not been heard as it should have been, and that mandamus is a proper remedy to compel an original hearing in a chancery suit.

724 CARLISLE vs. CIRCUIT JUDGE (Wayne), No. 11918½.

To compel respondent to set aside a decree of divorce.

Denied April 21, 1891.

The bill for divorce was filed October, 1886, and the decree granted February 26, 1887. Relator was in Wisconsin at the time of the filing of the bill, and the reason urged by her was, that in the order of publication her name was given as Ellen Carlisle. It appeared, however, she had delayed the application for three years, and the delay was not explained.

See Carlisle vs. Carlisle, 96 M., 128.

725 DALY vs. CIRCUIT JUDGE (Wayne), No. 14448, 102 M., 392.

To set aside a decree of divorce.

Denied Nov. 7, 1894, with costs.

Relator filed a bill for divorce. Defendant filed an answer in the nature of a cross-bill, to which complainant answered. Defendant was granted a decree March 21, 1894. The cross-bill was verified, but the verification did not contain the averment negating collusion. June 29, 1894, relator filed a petition asking that the decree be set aside, because (1) no replication to complainant's answer to the cross bill had been filed; (2) defendant's cross-bill was not properly verified; (3) the testimony was taken within four months after the filing of the cross-bill, and (4) the decree was entered within the same time.

726 ROGERS vs. CIRCUIT JUDGE (Kent), No. 14069.

To vacate a decree of divorce.

Denied April 3, 1894.

Relator filed a bill in Kent County for divorce from the bonds of matrimony. Defendant had been out of the State, but resided in Barry County. He answered. Proofs were taken, and at the hearing complainant's counsel announced that, by mistake, the bill filed prayed for an absolute divorce, and moved for leave to file an amended bill praying for a divorce from bed and board. The motion was granted, and an amended bill was filed to which defendant answered, praying for affirmative relief. By consent, it was agreed that the testimony already taken should stand, and that the defendant's testimony might be taken upon his answer.

By stipulation, the testimony of the defendant was taken before a commissioner in Barry County. No further testimony was taken and defendant was granted an absolute divorce.

Complainant moved to vacate the decree on the ground (1) that defendant's answer did not show that he had been a resident of the State for the statutory period; (2) because the answer did not show sufficient cause for divorce; (3) because no notice was given to the prosecuting attorney of defendant's application for divorce; (4) because the testimony taken in support of defendant's application was taken within the four months; (5) because defendant's testimony was not taken in open court; (6) because relator was not permitted to testify in response to defendant's testimony, (no attempt was made to take or introduce her testimony); and (7) because complainant had no notice or knowledge that a divorce from the bonds of matrimony had been decreed, until after the lapse of the time for an appeal.

727 CAHALEN vs. CIRCUIT JUDGE (Ionia), No. 15638½.

To vacate an order dismissing, for want of prosecution, a bill filed to enjoin the issuance of a sheriff's deed, upon an execution sale, and proceed to a hearing upon the merits.

Order to show cause denied June 2, 1896.

728 VAN HOESEN vs. CIRCUIT JUDGE (Kalamazoo), No. 11917½.

To set aside proceedings to condemn lands for cemetery purposes.

Held, not proper remedy and denied April 21, 1891.

Matter afterwards reviewed on certiorari.

Board of Health vs. Van Hoesen, 87 M., 533.

729 MARQUETTE, HOUGHTON & ONT. R. R. CO. vs. PROBATE JUDGE (Houghton), 53 M., 217.

To set aside an award, made by commissioners in proceedings to condemn land for railway purposes, that had been paid under protest, where the land had been actually appropriated, since the allowance of the writ would leave the amount undertermined after the land had been taken.

Denied April 9, 1884.

730 O'BRIEN vs. TALLMAN, 36 M., 12.

When a justice of the peace has once rendered judgment in a cause he has no power to vacate the same, or set it aside, or to render a new judgment; and if he attempt this, though it be done in obedience to a writ of mandamus from the Circuit Court, the new judgment, so attempted to be rendered, will be a mere nullity, and the prior judgment will remain in full force. While mandamus may issue to compel a justice, if he refuses, to proceed and enter up a judgment in a proper case for a judgment to be rendered, it will not lie to compel him to vacate or change a judgment he has already rendered, and which is subject to be reviewed by certiorari or on appeal. Mandamus will not lie to review irregularities in the judicial action of an inferior tribunal where the party has another adequate remedy.

731 CHASE vs. CIRCUIT JUDGE (Wayne), No. 12739.

To set aside judgment on transcript from a justice of the peace.

Denied May 4, 1892, with costs.

Relator insisted, that the affidavit, being made by an agent, was not made by one of the persons authorized by statute to make the same; that it did not state that "an execution may by law be issued upon" the same, nor that the judgment was "for \$20 or over, exclusive of costs," and did not set forth that the defendant "being the person against whom the execution may issue" did not have sufficient goods, etc." Citing Act No. 173, Laws 1885.

Respondent insisted, that the terms "agent" and "attorney" are used interchangeably; that an attorney is defined "as one who acts for another by virtue of an appointment by the latter;" that the statute does not require the affidavit filed with the justice to specify the amount due; that whether an execution might be issued appeared from the docket of the Justice, and that the language of the affidavit that "there is not sufficient goods," etc., "belonging to any person or persons against whom such execution may issue" was sufficient, and further, that the transcript was filed September 10, 1890; that certain real estate had been levied upon and sold, and the time for redemption had expired; that relator was guilty of laches; Fowler vs. Circuit Judge, 31 M., 72 (943); that the petition does not set forth that relator has no other remedy; that relator has other remedies, Vrooman vs. Thompson, 51 M., 452; Wedel vs. Green, 70 M., 642; and that a motion is not the proper mode of reviewing the question.

732 BROWNELL vs. CIRCUIT JUDGE (Cass), No. 12473.

To vacate a judgment entry.

Granted January 20, 1892, with costs.

On June 18, 1890, a judgment was recovered in the Cass circuit against relator and one E., composing the firm of E. & Co. Neither of the defendants appeared, and no service was had upon E. Service was made upon relator in Allegan County.

Respondent contended (1) that it is not necessary that the records and proceedings affirmatively show jurisdiction after judgment, Ward vs. Cousins, 3 M., 258. (2) That the claim is not seasonably made, Webb vs. Mann, 3 M., 139; Thompson vs. M. B. A., 52 M., 524; Clayburn vs. Reynolds, 31 S. C., 273. (3) That the authority of the higher tribunals is presumed until the contrary appears, Beck vs. Judson, 8 N. Y., 260;

Foot vs. Stevens, 17 Wend., 483; Hart vs. Sizer, 21 Wend., 40; Cameron vs. McRoberts, 3 Wheat. (U. S.), 591. (4) That the judgment has ceased to be operative, and the Circuit Court has no further jurisdiction over the case.

Relator contended that the Statute, Sec. 7316, required service upon the resident defendant before service could be had upon the joint defendant in another county. Citing, Jacobson vs. Circuit Judge, 76 M., 234 (14); Dennison vs. Smith, 33 M., 158; Clark vs. Lichtenberg, 33 M., 307; Ellis vs. Fletcher, 40 M., 321; Johnson vs. Delbridge, 35 M., 436; Platt vs. Stuart, 10 M., 261; Gould vs. Jacobson, 58 M., 288; Wells vs. Walsh, 25 M., 343; Ellis vs. Fletcher, 40 M., 321.

That mandamus is the proper remedy, Barrett vs. Circuit Judge, 18 M., 247 (739); and that lapse of time would not affect the right, Felhart vs. Wilson, 37 N. W., 585.

733 WILLIAMS vs. CIRCUIT JUDGE (Saginaw), No. 12737½.

To grant motion for arrest of judgment, in a case where relator was convicted of an assault and battery, under an information charging "assault with intent to do great bodily harm less than the crime of murder."

Order to show cause denied May 4, 1892. See No. 713.

734 LINDSAY vs. CIRCUIT JUDGES (Wayne), 63 M., 735.

To set aside a non-suit.

Granted November 17, 1886.

Plaintiff was prevented, by a misapprehension, from being in court when his case was called. To a motion to set aside the non-suit, objection was made that it had not been entered on the motion book. The objection was sustained, with leave to renew the motion. Upon renewal of the motion another judge overruled it, upon the ground that substantial justice had already been done; that the suit was a trifling matter and had been expensive to the parties and county.

735 MERCHANTS' INSURANCE CO. OF NEWARK, N. J., vs. CIRCUIT JUDGE (Wayne), No. 15689.

To vacate a judgment against relator as a garnishee defendant, and permit it to file a supplemental disclosure, where the Circuit Court had denied the motion on the ground of laches.

Denied October 21, 1896, with costs.

736 BEGOLE vs. CIRCUIT JUDGE (Ionia), 32 M., 61.

To require respondent to set aside a judgment, reinstate the case and hear a motion therein for continuance.

Granted April 29, 1875.

Suit upon a promissory note. Plea, general issue. No affidavit of merits filed. On the first day of the term relator moved, on affidavits showing the absence of material witnesses, for a continuance; respondent refused to entertain the motion, on the ground that the case had been noticed for inquest, called the case out of its order and judgment was entered for plaintiff.

Held, that a defendant is entitled to produce witnesses on the inquest to show the actual amount due or quantum of recovery.

737 CHICAGO & N. E. R. R. CO. vs. CIRCUIT JUDGE (Genesee), 40 M., 168.

To compel respondent to reopen a judgment and grant leave to file an affidavit of non-execution of the instrument sued upon.

Denied January 14, 1879.

Held, that the motion was addressed to the discretion of the court below, which could not be controlled by mandamus.

738 MORSE vs. CIRCUIT JUDGE (Kent), No. 12051.

To set aside order vacating judgment and execution sale.

Granted July 1, 1891, with costs as against White.

A judgment was recovered by B. against one White in Justice Court in 1879. In 1885 the judgment was assigned to relator, who "as assignee and owner of the judgment rendered," etc., filed with the justice an affidavit, took a transcript, filed same in the Circuit Court; a writ of execution issued, and a levy was made. In December, 1885, relator filed a bill in aid of execution against W. and wife, and R. W., his son, alleging the judgment, the assignment, the procuring of the transcript, the filing of same with the affidavit therefor, in the Circuit, etc., and that W. and wife had conveyed the property levied upon to his son, to defraud complainant, and praying that the deed might be declared fraudulent and set aside, and the premises might be sold to satisfy said execution.

Defendants appeared and demurred, specially alleging that it did not appear that any affidavit was ever made by any party legally entitled to make the same, upon which to base the issuing and filing in the Circuit of the transcript of the judgment. The demurrer was overruled, and afterwards complainant had a decree in accordance with the prayer of the bill. The premises were sold and complainant become the purchaser. Subsequently relator brought ejectment, and recovered possession. W. afterwards moved for a statutory new trial, which was granted. W. then moved to set aside the judgment and sale, on the ground that no sufficient affidavit was ever made or filed with the justice to authorize the issue of the transcript.

The circuit judge granted the motion.

Relator contended that the motion to vacate was a collateral attack; that the laches in making the motion had not been excused; that after final decree in the chancery cause, and judgment in the ejectment suit, defendant was not entitled to relief by way of motion and that the decree in the chancery was conclusive. Citing *Tusca vs. O'Brien*, 68 N. Y., 446; *Beam vs. Macomber*, 35 M., 455; *Pray vs. Hegeman*, 98 N. Y., 351; *Aurora City vs. West*, 7 Wall., 82; *Beloit vs. Morgan*, 7 Wall., 619; *Cooper vs. Reynolds*, 10 Wall., 308; *Cornett vs. Williams*, 20 Wall., 226; *Hazen vs. Reed*, 30 M., 331; *Moore vs. Martin*, 38 Cal., 428; *Hooker vs. Yale*, 56 Miss., 197.

739 BARRETT vs. CIRCUIT JUDGE (Branch), 18 M., 247.

To compel respondent to set aside a judgment because of illegal notice of trial.

Granted April 21, 1869.

Held, that under Circuit Court Rule No. 10, providing for notice of trial in appeal cases, when a party is absent, to make such notice valid, it must appear by legal proof that the residence of the party cannot be ascertained after diligent inquiry, and that the notice was posted up, in the clerk's office, for the required period in some conspicuous place, and proof must appear of the place of such posting.

Mandamus is the proper remedy in such a case. Where directed to a legal tribunal in the course of justice it is an exercise of supervisory judicial control, and in the nature of appellate action. The writ should be regarded as directed to the justice officially, and as binding the incumbent whoever he may be. The party sustaining the action complained of, is to all intents and purposes represented by the judge and is therefore responsible for the costs. There is no authority to impose terms upon the relator in such a case.

740 BURKLE vs. CIRCUIT JUDGE (Ingham), No. 15273½.

To vacate an order setting aside a verdict and judgment in an action of trespass on the case, where the jury returned a verdict in favor of the plaintiff for "six cents damages and costs of suit."

Order to show cause Denied December 3, 1895.

741 SMITH vs. CIRCUIT JUDGE (St. Joseph), 46 M., 338.

To set aside a sale, levy, execution and judgment, upon a transcript of judgment by a justice, because (1) the cause was commenced before R. justice, but was tried before F. justice,

the following entry appearing in the docket: "On account of sickness W. Fox tries this suit. S. R. Rockwell, J. P.," and the parties having appeared before F. the cause was tried without objection upon the merits, and (2) no separate affidavit of amount due was filed with the transcript, but the affidavit filed with the justice, on the day before, set forth the amount due.

Denied June 22, 1881.

742 O'BRIEN vs. CIRCUIT JUDGE (Alpena), No. 11935½.

To compel respondent to vacate a judgment rendered against him as surety on an appeal bond.

Order to show cause denied May 5, 1891.

Appeal from justice. Relator contended that appellant did not make the affidavit on appeal and did not sign the bond.

743 BEALS vs. CIRCUIT JUDGE (Clinton), No. 12623, 91 M., 146.

To compel respondent to set aside judgments, where two makers were sued upon a joint and several promissory note. One defendant signed a cognovit and judgment was entered against him. The other defendant appeared and pleaded the former recovery, and the court held it a bar. Relator asks for a mandamus to set aside both judgments.

Denied April 7, 1892, without costs.

Held, that the first cognovit might properly be treated as a default as to the defendant signing it, under How. Stat. Sec. 7355; that the plaintiff might properly proceed to trial against the other defendant; that the judgment first taken should stand, and that the Circuit Court would without doubt set aside the last judgment on proper application.

744 CASPER vs. CIRCUIT JUDGE (Kent), 45 M., 251.

To vacate a judgment in replevin.

Denied January 12, 1881.

Barber held two chattel mortgages given by relator and placed them in the hands of Marsh, a constable, for collection. Marsh took possession of the property, but before sale relator brought replevin. Barber appeared for defendant Marsh, and thereafter Marsh and Casper, the latter by attorneys, entered into a written stipulation, that the replevin suit be dismissed and discontinued without judgment for the return or value of the property and without costs to either party. All these facts having been shown to the Circuit Court, where said replevin suit was pending, that court proceeded with the cause and judgment was rendered in favor of the defendant therein, according to his special interest in the property under the mortgages.

745 FLAGG vs. CIRCUIT JUDGE (St. Clair), No. 12498.

To compel vacation of order setting aside judgment.

Denied February 3, 1892, without costs.

The case was tried in the thirty-first circuit, before the circuit judge of the sixteenth circuit, the judge of the former circuit being disqualified. In the absence of the attorneys for defendant, plaintiffs moved for judgment before the judge of the thirty-first circuit, and the same was entered, but afterwards the same judge, of his own motion, set aside the judgment entered, allowing the verdict to stand.

746 HYDE vs. CIRCUIT JUDGE (Calhoun), 1 Doug., 417.

To set aside a judgment and order for sale of attached property, on the ground that the judgment was irregular, and that the sheriff's return does not show that all the steps required by law to make a valid appraisal and sale had been taken.

Denied January, 1844.

Held, that a discontinuance of a suit in attachment by the original plaintiff will not impair the right of a creditor, who has previously filed his declaration, to proceed to judgment, nor affect his lien upon the attached property. A motion to set aside a judgment for irregularity, made two years after it was rendered, the delay being unexplained, will be deemed too late.

It was made to appear by the affidavit of the sheriff that the steps required by law were in fact taken.

747 HITCHCOCK vs. CIRCUIT JUDGE (Wayne), No. 13555½, 97 M., 614.

To vacate an order setting aside a judgment.

Order to show cause denied May 31, 1893, on the ground that application should first be made to the Circuit Court to set aside the order complained of.

748 ROCHE vs. CIRCUIT JUDGE (Branch), 26 M., 370.

To vacate an order setting aside a judgment.

Granted January 14, 1873.

The order was based upon a stipulation which it was held could furnish no grounds for such an order, being void as to the relator, from a non-compliance with conditions therein expressed.

749 HEFFRON vs. CIRCUIT JUDGE (Schoolcraft), No. 13180½.

To vacate a judgment.

Order to show cause denied November 29, 1892.

Suit was commenced in the name of the State against relator and two others on a forfeited recognizance. Personal service was had upon the other two. Afterwards upon an affidavit alleging that relator had absconded to the injury of his creditors,

a writ of attachment was taken out and levied upon relator's real estate. The question raised was, whether in an action commenced against several defendants upon a forfeited recognizance, and personal service of process is made upon but one defendant, attachment proceedings can be begun and prosecuted against the defendant not served, under How., Sec. 8019.

750 OLSON vs. CIRCUIT JUDGE (Muskegon), 49 M., 85.

To compel respondent to set aside a judgment reversing the judgment of a justice of the peace, on appeal, where the errors complained of appear of record, and everything necessary to a review and determination may be returned on writ of error.

Denied October 4, 1882.

Held further, that whether mandamus is a proper remedy in a case, is not determined by an order to show cause why the writ should not issue.

751 HITCHCOCK vs. CIRCUIT JUDGE (Wayne), No. 13576; 96 M., 297.

To compel respondent to vacate an order granting a motion to set aside a judgment, in a case where a transcript had been obtained from a justice within ten days after the rendition of the judgment, and defendant within the ten days had filed a stay of execution.

Granted June 30, 1893, with costs.

752 SUPREME SITTING OF THE ORDER OF THE IRON HALL vs. CIRCUIT JUDGE (Wayne), No. 13643.

To compel respondent to vacate an order reinstating a judgment.

Granted October 3, 1893, with costs.

A judgment had been entered against relator in default of

plea. Relator moved to vacate the same, and the motion was granted on terms. The terms were not complied with, and the court, upon application, reinstated the judgment. Relator afterwards moved to vacate the same, which motion was denied.

753 DUNKLEE vs. CIRCUIT JUDGE (Washtenaw), No. 13800.

To vacate an order setting aside a judgment on inquest.

Denied November 15, 1893, with costs.

Before judgment was taken defendant's counsel had appeared before the court and explained to the court his failure to file an affidavit of merits, on the ground of his own illness, but the attorney for plaintiff insisted that delay was prejudicial, inasmuch as the defendant was disposing of his property, whereupon the court permitted plaintiff to take judgment, intimating that he would hear a motion to set aside same. The motion was afterwards made and the judgment vacated.

754 TODD vs. CIRCUIT JUDGE (Gratiot), No. 13448.

To compel vacation of an order setting aside a judgment.

Granted April 19, 1893, with costs.

Case set for trial. Defendant, a non-resident. On the day set, defendant's counsel exhibited a telegram from his client stating his inability to be present. No formal motion for a continuance was made, and plaintiff took judgment December 15, 1892. Defendant applied for and was granted twenty days in which to move for a new trial, or sixty days, provided that defendant file a bond for costs within twenty days. The twenty days expired and no motion was made, and no bond given. On February 11, 1893, costs were taxed and an execution issued. On March 8, 1893, a motion for vacation of judgment and a new trial was made and on March 15, 1893, same was granted.

Respondent returns, that at the time that judgment was ren-

dered, he "stated in substance that he should set aside the judgment on terms if application was made," and counsel for respondent contends that it was understood between counsel that the judgment should be set aside on payment of costs. Relator's counsel cited as to this point, *Roche vs. Circuit Judge*, 26 M., 370 (748).

755 REED vs. CIRCUIT JUDGE (St. Clair), No. 13120.

To compel the vacation of a judgment in ejectment.

Granted December 2, 1892, with costs.

One Lashbrook, upon conveyance from one of the heirs of relator's husband, commenced ejectment, by filing declaration against relator, who was and still is in possession of a homestead parcel in which she claimed dower. He subsequently filed his own affidavit of service in which he stated that "he served a true copy of a declaration in ejectment, of which the within is a true copy, on," etc., "by handing it to her in her house," etc.

Relator consulted an attorney, and was advised that there had been no valid service, and to ignore the pretended service. Defaults were entered, and on October 20, 1886, plaintiff had judgment.

In February, 1890, the judgment entry was found defective, in that the land was not properly described, and upon plaintiff's application, without notice to relator, a new judgment was entered as of the date of the former judgment. In March, 1890, plaintiff in the ejectment suit filed a bill for partition against relator and others, and in December, 1890, relator moved to vacate the judgment in the ejectment case.

Relator contended (1) that the return did not show service of a rule to plead; (2) that the pretended service was invalid, because made by plaintiff in person; (3) that How., Sec. 7661 is not applicable because this is not a case of mere irregularity, but of lack of jurisdiction, and (4) that if the statute is held applicable, the motion was made within one year after any judgment was entered affecting relator's interest in the land occupied by her. Citing *Morton vs. Crane*, 39 M., 528; *Bush vs. Meachem*, 53 M., 574.

Respondent contended that the service by plaintiff was an irregularity only, *Parmalee vs. Loomis*, 24 M., 242; *Granger vs. Superior Court Judge*, 44 M., 384 (715); *Jenness vs. Circuit Judge*, 42 M., 471 (781); *Steere vs. Vanderberg*, 67 M., 530; *Rasch vs. Moore*, 57 M., 56; *Union Mut. Ins. Co. vs. Page*, 61 M., 75; *Munn vs. Haynes*, 46 M., 142; *Arnold vs. Nye*, 23 M., 297.

756 ORSLAND vs. CIRCUIT JUDGE (Wayne), No. 12027½.

To compel the entry of an order staying proceedings on a judgment for costs.

Order to show cause denied May 19, 1891.

Judgment for costs had been rendered against relator and another, on demurrer to a declaration filed in their behalf. Relator's contention was, that he had not authorized the commencement of the suit.

757 BURT vs. CIRCUIT JUDGE (Wayne), 82 M., 251.

To vacate an order staying proceedings in a suit, pending the determination of the issue in a garnishee suit, unless a bond be given under How. Stat., Sec. 8105.

Denied August 1, 1890.

758 GUNZBERG ET AL. vs. CIRCUIT JUDGE (Kent), 42 M., 591.

To compel respondent to stay proceedings for the collection of a judgment, where the judgment debtor had been garnisheed, but it appeared that the judgment had been assigned before the commencement of the proceeding in garnishment, and was subject to a lien for attorney fees.

Denied January 23, 1880.

759 PARKER vs. CIRCUIT JUDGE (Calhoun), 24 M., 407.

To compel the court to make an order for a perpetual stay of proceedings.

Denied April 4, 1872.

The motion in the court below was founded on affidavits, which set forth that the judgment had been compromised and paid, but the compromise and payment was denied, and the court held that the question could not be determined upon mere affidavits.

760 LE ROUX ET AL. vs. CIRCUIT JUDGE (Bay) 46 M., 189.

To vacate an order staying further prosecution, in the Circuit Court, of a suit brought by relators, and removing the case to the Circuit Court of the United States for the Eastern District of Michigan.

Denied June 8, 1881.

Held, that no order of the Circuit Court for the removal is necessary to complete the transfer after the papers for the removal have been filed, and where such an order has been made in a Circuit Court, the vacation thereof would have no effect upon the cause.

761 CRANGER vs. CIRCUIT JUDGE (Wayne), 27 M., 405.

To vacate an order staying proceedings in a common law action commenced in the Wayne Circuit Court for services in fitting out a vessel and as master, for commissions on her earnings, and for certain outlays and expenses, until the final determination of an action in rem against the vessel in the United States Circuit Court.

Granted July 11, 1873.

762 CULVER vs. SUPERIOR COURT JUDGE (Detroit), 57 M., 25.

To set aside an order staying proceedings, in an action upon the bond of a residuary legatee, to recover a deficiency after foreclosure, on the ground that plaintiff therein had not obtained leave from the court in which the foreclosure was had to bring a suit at law for the deficiency.

Granted May 13, 1885, the court holding that leave was unnecessary, but that in any event the failure to obtain it was a mere irregularity which defendant had waived.

763 BIGELOW vs. CIRCUIT JUDGE (Wayne), No. 13902.

To vacate an order entered Dec. 5, 1893, staying proceedings for thirty days, upon a judgment rendered October 27, 1893, where an order had been entered on the last named date staying proceedings until December 5, 1893, upon condition that the statutory bond be filed within twenty days, and no bond had been filed.

Granted January 3, 1894, with costs.

764 CITY OF MONROE vs. CIRCUIT JUDGE (Monroe), No. 11970½.

To compel respondent to vacate an order staying proceedings, and to proceed to judgment.

Order to show cause denied May 5, 1891.

An administratrix brought suit against the city of Monroe for negligent injury, resulting in death to her intestate. Pending same, she applied to the Probate Court and was discharged. One of the heirs appealed from the order of discharge. Defendant pleaded the discharge in abatement, and, on the hearing thereof, an order was entered staying proceedings until a new administrator was appointed, and the disability removed.

765 PATTERSON vs. CIRCUIT JUDGE (Muskegon), No. 14811½.

To vacate an order staying proceedings in the suit of Andrew J. Stebbins, administrator, against relator, wherein defendant had judgment for costs amounting to \$97.80, it appearing that said Stebbins, as administrator, had previously obtained a decree against relator by which relator was required to pay to said administrator \$990.82, no part of which had been paid, and the order complained of provided that proceedings for the collection of the said costs be stayed until the aforesaid decree is satisfied.

Order to show cause denied April 2, 1895.

766 FENTON vs. CIRCUIT JUDGE (Mackinac), 76 M., 405.

To compel respondent to set aside an order staying proceedings in a partition suit, until complainant establishes his title at law, and to enter a final decree.

Denied October 11, 1889.

Held, that where in a partition suit a plea of ouster and adverse possession is entered by the defendant in actual possession, and conflicting testimony shows that the defense is made in good faith, and complainant's legal title upon that defense is doubtful and uncertain, the proceedings should be stayed until complainant establishes his title at law.

767 WATSON vs. RANDALL (Circuit Court Commissioner), 44 M., 514.

To compel respondent to issue an execution for costs taxed by him in proceedings under the fraudulent debtors' act.

Granted October 27, 1880.

768 GRATOPP vs. VAN EPPS (Justice of the Peace), No. 16274; 4 D. L. N., 418; 71 N. W., 1080.

To compel respondent to issue an execution upon a judgment recovered before his predecessor.

Granted July 13, 1897.

Respondent was elected to succeed one Salisbury, whose term expired July 4, 1895. The city re-incorporated under Act No. 215, Laws of 1895, and at the time of such re-incorporation there were four justices in said city, two of whom, not including respondent, were re-elected under Sec. 5 of Chap. 5 of said act.

Held, that a justice of the peace is a constitutional officer and the legislature cannot deprive him of the power and duties conferred upon him by that instrument.

769 LOH ET AL. vs. CIRCUIT JUDGE (Wayne), 26 M., 186.

To compel respondent to order an execution to be issued against the sureties on a bond, as well as the principal defendants in a garnishee suit.

Granted November 2, 1872.

Upon the service of the writ of garnishment in said case, the principal defendants executed and filed therein a bond with two sureties for the release and discontinuance of the garnishee proceedings, in accordance with the statute (Comp. Laws 1871, Sec. 6512). Subsequently judgment was obtained against the principal defendants, and thereupon an application was made to the court for said order.

770 GRIFFIN vs. POTTER (Justice of the Peace), 27 M., 166.

To compel respondent to issue execution upon a judgment recovered by him against one Ellen O'Connor.

Denied April 22, 1873.

Subsequent to the recovery by relator of his judgment, one Jeremiah O'Connor brought suit before the respondent against relator and garnisheed said Ellen O'Connor, who answered, admitting the indebtedness to relator by virtue of his judgment against her. After judgment against the principal defendant

and judgment against the garnishee defendant, the latter paid the money into court to satisfy relator's judgment against her, and respondent recalled the execution which had been issued upon relator's judgment, and entered satisfaction thereof. Relator afterwards applied the money so received in payment of the judgment in favor of Jeremiah O'Connor.

771 CHASE vs. CIRCUIT JUDGE (Ingham), No. 14256½.

To vacate order directing execution to issue against relator in person, upon a judgment for costs, in an action commenced by her, as administratrix de bonis non, against a railroad company for negligence resulting in the death of relator's husband, it appearing that there were no assets in her hands belonging to the estate.

Order to show cause denied June 19, 1894.

772 GILDERSLEEVE vs. CIRCUIT JUDGE (Kent), No. 13158, 97 M., 606.

To compel respondent to recall an execution issued against a surety, on appeal from Justice Court, more than thirty days after judgment.

Granted January 11, 1893, without costs. How., Sec. 7029.

773 CLARK vs. CIRCUIT JUDGE (Bay), 62 M., 355.

To recall an execution and perpetually stay the issuing of any execution upon a certain judgment.

Denied July 8, 1886.

April 15, 1884, Miller et al. recovered judgment in ejectment against relator and another. On appeal, judgment affirmed, Miller vs. Clark, 56 M., 337. June 8, 1885, plaintiffs filed their election to abandon the premises to relator at the value estimated

by the jury, and upon motion of plaintiff, a judgment was rendered in their favor for the amount. Relator again appealed and this judgment was reversed, 60 M., 162. Plaintiffs then paid to the clerk the amount awarded to relator for improvements, and an execution, with directions for delivery of possession to plaintiffs, was placed in the sheriff's hands. Relator moved to recall the execution, on the ground that the sum awarded to relator for improvements was not paid within the year provided for by How. Stat., Sec. 7839, but the Supreme Court held that the year did not commence to run until April 15, 1885, when the judgment was affirmed by 56 M., 337..

774 McFARLAN vs. CIRCUIT JUDGE (Saginaw), No. 13087.

775 BROWN vs. CIRCUIT JUDGE (Saginaw), No. 13088.

To vacate orders recalling executions which were issued on judgments upon transcripts filed from a justice of the peace.

Granted October 26, 1892, with costs in each case.

Relator, a resident of Genesee County, recovered judgment against one Hicks, a resident of the township of Albee, in Saginaw County, before a justice of the peace of the township of Birch Run, Saginaw County; took a transcript and filed same in the Circuit Court for Saginaw County, and an execution was issued from said court. Upon application made by defendant, the circuit judge made an order recalling the execution, on the ground that the justice had no jurisdiction.

The respondent raised two questions: First, that the justice had no jurisdiction, because the action was not brought before a justice of the city or township where said plaintiff or said defendant resided, or before a justice of another city or township in the same county next adjoining the residence of the plaintiff or defendant, or before some justice of a city in the same county formed from a township or townships next adjoining the residence of plaintiff or defendant, but that on the contrary, said plaintiff was a non-resident of Saginaw County, and defendant was a resident of Albee, Saginaw County, and said town-

ships of Albee and Birch Run are not adjoining townships. How. Stat., Secs. 6818-6819; Hall vs. Shank, 57 M., 36.

Second, that the docket entry of the Justice does not state sufficient to confer upon the justice jurisdiction, in that it does not show the residence of either plaintiff or defendant to be such as will give the justice jurisdiction; Spear vs. Carter, 1 M., 19; Allen vs. Carpenter, 15 M., 25; Clark vs. Holmes, 1 Doug., 390; Chandler vs. Nash, 5 M., 409; Wall vs. Trumbull, 16 M., 228; Macumber vs. Beam, 22 M., 395; Saunders vs. Tioga Mfg. Co., 27 M., 520; Welmer vs. Bunbury, 30 M., 200; Cofrode vs. Circuit Judge, 79 M., 332 (342).

Relator insisted that the justice had jurisdiction under How. Stat., Sec. 6819, and cited Hunter vs. Burtis, 10 Wend., 363.

776 PARSONS vs. CIRCUIT JUDGE (Wayne), 37 M., 287.

To vacate an order setting aside a pluries writ of execution upon a judgment, action upon which is barred by lapse of time.
Denied October 9, 1877.

777 WEISS ET AL. vs. CIRCUIT JUDGE (Wayne), 50 M., 158.

To vacate an order restraining the sheriff from levying an execution upon the property of a surety upon an appeal bond, on appeal from a Justice Court, where the judgment was rendered on August 14th. The costs were taxed August 26th, and the execution issued September 23.

Granted February 27, 1883.

Held, that until taxation of costs, the execution did not become legally issuable within the meaning of Comp. Laws Sec. 6452

778 JENNINGS vs. CIRCUIT JUDGE (Kalamazoo), 44 M., 99.

To compel respondent to grant a motion requiring the sheriff to return an execution on a judgment, in a cause appealed from a justice of the peace, which was ante-dated, for correction.

Denied June 17, 1880, as in any proceeding against the sureties on the appeal bond, the facts could be shown.

779 HOMER VILLAGE vs. CIRCUIT JUDGE (Calhoun), No. 16235½.

To vacate an order recalling an execution issued upon a judgment for costs, before an appeal from the taxation had been determined, and retaxing the costs.

Order to show cause denied April 14, 1897.

780 CASTOR vs. CIRCUIT JUDGE (Allegan), 54 M., 318.

To recall an execution issued under a decree in chancery, in a case appealed since the execution was issued.

Denied June 25, 1884.

Held, that the fact that defendant intends to take an appeal does not preclude the complainant from taking an execution, and that the circuit judge cannot be required to vacate an order which was not erroneous when made.

781 JENNESS vs. CIRCUIT JUDGE (Lapeer), 42 M., 469.

To vacate an order setting aside an execution and the proceedings had under it.

Granted January 20, 1880.

One Turrill recovered judgment in the Circuit Court for Lapeer June 1, 1874.

Plaintiff died intestate July 31, 1876, and July 19, 1879, the administrators of his estate caused an execution to issue and a levy and sale thereunder. In April, 1879, the judgment debtor moved the court to set aside the execution and levy and sale under it, because taken out after the plaintiff's death and without steps to revive.

Held, that the omission to revive is an irregularity only and may be cured by an order nunc pro tunc.

782 LYON vs. CIRCUIT JUDGE (Clinton), 66 M., 676.

To vacate an order setting aside an execution returned as satisfied.

Granted July 7, 1887.

Held, that where a sheriff has made a set-off of executions under the statute and returned the larger one as satisfied, it is not competent for the Circuit Court on motion to set aside the return, and grant a second execution on the judgment. The refusal of the circuit judge to compel the sheriff to make a set-off of executions under How. Stat., Sec. 7709, is not reviewable on mandamus. *Wells vs. Circuit Judge*, 39 M., 21 (482), but such refusal will not bar the right to proceed in equity for the same relief. *Wells vs. Elsam*, 40 M., 218. It is contrary to all right to finally determine legal claims on motion and affidavits. *Parker vs. Circuit Judge*, 24 M., 408 (759); *Brown vs. Thompson*, 29 M., 71.

783 HENDERSON vs. CIRCUIT JUDGE (Wayne), 40 M., 244.

To recall an execution issued to enforce an order granting costs upon a continuance, where the party, upon whom the costs had been imposed, preferred to waive the continuance rather than pay the costs, and to rescind the order granting such costs.

Granted January 21, 1879.

784 WILLIAM WRIGHT CO. vs. CIRCUIT JUDGE (Wayne), No. 15328; 66 N. W., 954; 3 D. L. N., 30.

To set aside an order vacating a nulla bona return to an execution, upon which a creditor's bill has been since filed.

Denied April 21, 1896, with costs, on the ground that the showing that relators were entitled to have the return sustained, was not so clear as to justify interference by this court by mandamus.

785 KRAFT vs. CIRCUIT JUDGE (Wayne), No. 14436½.

To require respondent to set aside a sheriff's return of nulla bona upon an execution issued against relator, on the ground that it was false.

Order to show cause denied October 3, 1894.

The papers presented to the circuit judge set forth the amount of the original judgment by a justice; that relator owned an undivided one-third interest in lot five, block seventy-five, etc.; that his interest in said land was liable to execution, but the value of such interest was not given, nor was it stated that said interest was unincumbered.

786 RANDALL vs. CIRCUIT JUDGE (Wayne), No. 13301.

To vacate an order setting aside an order vacating a sheriff's return.

Granted November 15, 1893, with costs.

The sheriff had made a return of nulla bona, and plaintiff had filed a creditor's bill asking for a receiver, assignment, etc. Relator (defendant) moved the court, in the law case, to set aside the return, on the ground of its falsity, showing to the court that he had real estate and other property within the county of the value of \$168,000, subject to incumbrances aggregating \$61,000, and that the sheriff knew that he owned this property when the return was made. Upon the hearing these facts were not controverted afterwards plaintiff obtained an order vacating the order setting aside the return and directing defendant to produce witnesses and take proofs in open court respecting the truth of the return.

787 WORDEN vs. CIRCUIT JUDGE (Manistee), 33 M., 111.

To vacate an order granting leave to file a bond to stay or supercede execution, after return had been made to the Supreme

Court of the writ of error, and recalling a previously issued execution.

Granted January 4, 1876.

788 BALDWIN vs. TALBOT, 46 M., 19.

Delay in giving notice of execution sale is prejudicial to the debtor, if any one, and may be such as to entitle him to apply for a mandamus to compel the officers to proceed.

789 STINTON vs. CIRCUIT JUDGE (Kent), 37 M., 286.

To vacate an order setting aside an execution sale on motion after the period of redemption had expired, and a sheriff's deed had been delivered to relator, in a case where the execution was upon a judgment for costs against plaintiff in ejectment, who had submitted to a non-suit.

Denied October 9, 1877, as a matter of discretion and without costs.

790 McCARTHY ET AL. vs. CIRCUIT JUDGE (Monroe), 36 M., 274.

To vacate an order denying a motion for a re-sale of certain real estate, which had been sold under a levy, but the sale of which had been set aside.

Denied April 17, 1877.

An application for mandamus to vacate an order made must be heard on the facts disclosed at the hearing in the circuit, and not upon new facts brought into the case upon the application here; and where the record does not disclose what the showing was at the hearing in the circuit, the court cannot say that relators were entitled to any different order than that which was made, and will not grant mandamus to compel the circuit judge to reverse his action.

791 PETERSON vs. CIRCUIT JUDGE (Wayne), No. 15412; 66 N. W., 487; 2 D. L. N., 941.

To issue an order vacating a levy, in a case where a stay of proceedings for twenty days had been obtained, but six weeks after that time had expired a writ of error was taken out and a bond filed, and in the meantime a levy had been made under an execution issued nineteen days after the stay had been entered, but which was not delivered to the sheriff until after the lapse of the twenty days.

Denied March 11, 1896, with costs, on the ground that the bond filed was not retrospective, and the execution could not be regarded as issued until placed in the sheriff's hands.

792 SCOFIELD vs. CIRCUIT JUDGE (Clinton), No. 14654.

To vacate an order setting aside an order made, upon petition filed, to set aside a sale made by a receiver, nominally to his mother, but in reality to himself, requiring the purchaser to appear on a day fixed and answer said petition.

Denied March 19, 1895, with costs.

It appeared by the return that the circuit judge, making and setting aside said order, was at the time sitting in said circuit in the place and stead of the circuit judge of that county; that the confirmation of said sale was opposed before a former judge, upon the ground that the sale was in fact made to the receiver, but the circuit judge held otherwise and confirmed the sale, and an application had afterwards been made to the then circuit judge for that county, and an order for the appearance of the parties was issued thereon, and on the return day the petition was dismissed on the ground, among others, that relator here, petitioner there, was guilty of laches and that, upon the confirmation of the sale, the question now raised had been gone into and examined.

793 VAN WESTENBROGGÉ ET AL. vs. HYDORN (Justice of the Peace), No. 12028½.

To compel respondent to issue a body execution upon a judgment for costs in favor of defendant, in an action of replevin. Order to show cause denied May 12, 1891.

794 WHITING vs. BUTLER, 29 M., 121. (Error to Wayne.)

Held, that the right of a purchaser, on an execution sale, to a deed, after the expiration of the statutory period for redemption, is so complete and fixed as to be cognizable at law and enforceable by mandamus, and not to require a resort to equitable remedies.

795 PECKHAM vs. CIRCUIT JUDGE (Berrien), 74 M., 287.

To compel respondent to vacate an order setting aside an execution levy upon a judgment against an estate, where the writ was levied on lands which had belonged to the decedent, and upon application of the administrator the levy was set aside and the execution recalled.

Denied February 20, 1889.

796 COOK vs. CIRCUIT JUDGE (Kent), 70 M., 94.

To compel respondent to vacate an order setting aside an execution, and vacating a sale made to satisfy a judgment recovered by plaintiff, in an ejectment suit, for the value of land, on his electing to abandon it to the defendant.

Denied April 27, 1888.

Held, that the purchaser at said sale takes his title subject to the right of the defendant to defeat it by taking a new trial at any time within the statutory three years.

797 WILKIE vs. CIRCUIT JUDGE (Ingham), 52 M., 641.

To vacate an order setting aside a sale on an execution that had been levied without waiting for the enrollment of the decree, where the date of the decree, as shown in the execution, was notice of the fact that the execution was prematurely issued, and the motion to set aside was not made until the time to redeem had expired.

Denied February 8, 1884, although no notice of the proceedings to set aside the sale had been given to the purchaser.

798 WATTS vs. CIRCUIT JUDGE (Kent), No. 15495.

To vacate an order setting aside a foreclosure sale.

Denied April 8, 1896, with costs.

After decree the same was assigned to one Landis, who obtained an order of substitution without notice to the defendant, proceeded to sale and became the purchaser at an inadequate price.

Relator insisted that under Rule 125 notice was requisite.

799 FETTERS vs. CIRCUIT JUDGE (Wayne), No. 14439.

To compel respondent to set aside a levy and sale and recall an execution.

Denied November 20, 1894.

The proceeding grows out of *Atkinson vs. Weidner*, 79 M., 575; 83 Id., 412, and *Fetters vs. Atkinson*, 102 M., 485.

Relator paid the full amount of the judgment on the note into court and filed his bill. Subsequently the amount of the judgment was paid over, leaving the surplus referred to in the last named case. In some manner an order was afterwards obtained directing the payment over of the surplus to Atkinson, whereupon Swift took out an execution and proceeded to a levy and sale under the judgment in favor of Atkinson. The sur-

plus was afterwards returned to the register and the motion was made to set aside the sale and recall the execution.

The court below held said motion until the determination of *Fetters vs. Atkinson*, and then denied the same, holding that relator might redeem.

**800 TAWAS & BAY COUNTY R. R. CO. vs. CIRCUIT JUDGE (Iosco),
44 M., 479.**

To compel respondent to set aside an order granting an injunction.

Granted October 27, 1880.

Held, that the preliminary injunction was a final order and void; that any decree or order divesting possession or rights upon a preliminary inquiry is illegal and void; and when made in equity is a final order and appealable, though an appeal is not necessary to rescind it; that mandamus will lie to set it aside; that mandamus is designed to afford a summary and specific remedy, where the party applying for it would otherwise be subjected to serious injustice; that the jurisdiction of the Supreme Court in mandamus cases is not statutory, but plenary; that the writ may issue even where other remedies exist, if they are not sufficiently speedy to prevent material injury; and it lies to vacate an illegal injunction where the party affected thereby would otherwise have to submit to serious injury or to the risk of proceedings for contempt in disregarding it.

**801 DETROIT, L. & N. RAILROAD CO. vs. CIRCUIT JUDGE
(Genesee), 61 M., 33.**

To compel the dissolution of an injunction.

Denied April 15, 1886.

Held, that a mandamus to disturb action by a circuit judge in equity can only issue upon some exigency requiring prompt

action to prevent mischief; and so long as the law is open, the court is not called upon to use its extraordinary powers to assist private redress of supposed wrongs.

802* WERTHEIMER ET AL. vs. CIRCUIT JUDGE (Wayne), 83 M., 56.

To dissolve an injunction issued on an ex parte showing, restraining the relators from using or enjoying certain real estate.

Denied November 12, 1890.

Held, that covenants, affecting the mode of occupation and enjoyment of leased premises, run with the land, and the assignee, though not named, may be restrained by injunction from violating same.

803 AUDITOR GENERAL vs. CIRCUIT JUDGE (Iosco), 58 M., 345.

To vacate an order granting an injunction restraining the county treasurer and auditor general from making a sale of certain lands for the taxes of 1883.

Denied October 28, 1885.

804 WILCOX vs. CIRCUIT JUDGE (Shiawassee), No. 16045.

To vacate an order dissolving an injunction restraining the City of Corunna and its officers from paying money as a bonus for the establishment in said city of a shoe factory.

Denied, with costs, May 11, 1897.

805 CITY OF DETROIT vs. CIRCUIT JUDGE (Wayne), 79 M., 384.

To compel the dissolution of an injunction.

Granted January 31, 1890.

A city (as a corporation) is a single legal person, and in

proper cases is subject to legal coercion; and, where so liable, it is not irregular to restrain any city functionary who is engaged in carrying out the illegal purpose.

Whether mandamus is the proper remedy to remove an injunction which ought not to stand depends entirely on the conditions of its issue. Usually, if the mischief can be as well settled by appeal, that is the proper resort.

Where a preliminary injunction operates in such a way as to do violence to vested rights and interests, and to prevent the proper authorities from exercising their legal functions, it is such an invasion of right as entitles the aggrieved parties to a prompt redress, which is better for the public peace and order than encouraging an open disregard of the legal tribunals, where it can be avoided.

While the action of an inferior court, within its discretion, is to be reached by other appellate process, yet, when the action complained of is beyond any proper discretionary power, or is an abuse of discretion which cannot be justified on legal principles, this court may and will interfere by mandamus, if there is urgency or pressing occasion to do so. Citing *Pt. Huron & Grat. Co. R. R. Co. vs. Circuit Judge*, 31 M., 456 (848); *Tawas & Bay Co. R. R. Co. vs. Circuit Judge*, 44 Id., 479 (800); *Van Norman vs. Circuit Judge*, 45 Id., 204 (827); *Maclean vs. Circuit Judge*, 52 Id., 257 (292); *E. T. Barnum W. & I. Wks. vs. Circuit Judge*, 59 Id., 272 (825).

806 CRAWFORD ET AL. vs. CIRCUIT JUDGE (Wayne), No. 14777½.

To vacate an injunction restraining defendants (relators here) from selling, incumbering or disposing of certain improved real estate and from interfering with complainant's possession of certain apartments therein.

Order to show cause denied March 19, 1895.

807 ROSSMAN (Twp. Treas.) vs. ADAMS (Ct. Ct. Comr), No. 12629½.

To compel respondent to grant an injunction, restraining the owners of certain lands from cutting the timber therefrom before payment of certain taxes due thereon, where the bill alleges that the chief value of the land is the timber.

Granted March 18, 1892, with costs.

808 JOHNSTON vs. CIRCUIT JUDGE (Wayne), No. 15293½.

To vacate an injunction and strike cross-bill from files.

Order to show cause denied December 17, 1895.

Relator recovered judgment against the Farmers' Fire Ins. Co., which was affirmed by the Supreme Court in July, 1895. Relator afterwards commenced suit on the appeal bond. One Cartright, who was interested in the policy upon which judgment was recovered, filed a bill in chancery against relator for an accounting, making the insurance company a party defendant, and obtained an order enjoining payment of the judgment to relator. The insurance company filed an answer in the nature of a cross-bill and obtained an order restraining the collection of the judgment and the prosecution of the suit upon the appeal bond.

809 McMULLEN AND THE BOARD OF SUPERVISORS (Cheboygan) vs. CIRCUIT JUDGE (Ingham), No. 14434, 102 M., 608.

To require respondent to dissolve an injunction restraining the issue of certain county bonds amounting to \$35,000, where the resolution upon which the electors voted made the same payable in ten installments, within thirty years from the date of issue, and after a vote taken it was proposed to issue the bonds payable in fifteen years.

Denied, without costs, December 7, 1894.

Held, that the suit was properly instituted in Ingham County under How. Stat., Sec. 6612.

810 IONIA, EATON & BARRY FARMERS' INS. CO. ET AL. vs. CIRCUIT JUDGE (Ionia), No. 14162, 100 M., 606.

To compel respondent to dissolve an injunction restraining the levying of an assessment.

Granted June 2, 1896, with costs against complainant in the chancery proceeding.

Mandamus will lie to review the action of a circuit judge in granting a preliminary injunction, and in refusing to dissolve the same, where the return shows the question in dispute to be one of law merely.

811 ALBERTS vs. CIRCUIT JUDGE (Muskegon), No. 15366.

To vacate an order dissolving an injunction restraining the collection of certain taxes.

Denied February 19, 1896, with costs.

812 BOARD OF SUPERVISORS (Wayne) vs. CIRCUIT JUDGE (Wayne), No. 14947, 64 N. W., 42.

To dissolve an injunction restraining the issue of bonds, under Act. No. 295, Local Acts 1895.

Granted, without costs, July 2, 1895.

Held, (1) where a statute provides for calling a meeting of county supervisors by giving a written notice to each of them, it will be presumed that their meeting was legally called, and one attacking its validity must prove that the notices were not given.

(2) Proof of service of such notice need not be filed with the board or recorded on the record of its proceedings in the absence of a statutory provision.

(3) An election determining that a county building shall be built is not invalid on the ground of corruption because workmen were urged to vote for it on the ground that it would furnish them employment.

813 STEBBINS (Mayor) ET AL. vs. SUPERIOR COURT JUDGE
 (Grand Rapids), No. 15431; 2 D. L. N., 961; 66 N. W., 594.

To vacate an order restraining the issuance of certain bonds under a charter provision, authorizing such issue, provided the electors "shall have authorized the issue by a majority of their votes cast at any regular election;" where the number of votes cast at said election was 12,579, but the total vote cast upon the question of bonding the city was 7,024, of which but 3,874 voted in favor of the issue, which was not a majority of all the votes cast.

Denied March 24, 1896, without costs.

Note.—See McGoodwin vs. Franklin (Ky.), 38 S. W., 481.

814 STOCK vs. CIRCUIT JUDGE (Hillsdale), No. 13340.

To vacate an order dissolving an injunction, and restraining and enjoining the city of Hillsdale from making a loan and issuing bonds for the erection of an electric lighting plant.

Denied March 8, 1893, with costs.

Under Sec. 22, of the charter of the city of Hillsdale, Local Acts of 1891, p. 1008, the city council ordered a special election to be held on November 8, 1892, to determine the will of the electors of said city, as to effecting a loan and the issue of bonds for the construction and erection of an electric light plant. A majority of the votes cast favored the loan, whereupon the council passed a resolution authorizing the city clerk to give public notice that sealed proposals would be received at a place named, and until a time named, to furnish materials for, and to erect an electric light plant, reserving the right to reject any and all proposals, which notice was given by the clerk. Thereupon relator filed a bill to restrain the erection of the plant, the letting of any contract therefor, or issue of bonds, and a preliminary injunction was granted, restraining and enjoining the city, mayor and the clerk from making the loan and from signing the bonds. On motion the injunction was dissolved.

The bill set forth (1) that said vote was had at a presidential election, and not at a general election within the meaning of the charter, and was therefor invalid. (2) That the resolution calling the election was illegal and void, for the reason that it was not passed by a majority of all the members elect. (3) That inasmuch as the ballots used at said election did not conform to the statute, the proposition to make said loan, was not approved by the electors. (4) Said city could not legally enter into competition with complainant in the business of furnishing electric light to private individuals. (5) That the mayor and council give out and threaten to make said loan, to issue such bonds, to erect and maintain an electric light plant, and to furnish electric light to private individuals.

Respondent contended, that the election was not such an act as bound the council to establish a plant, or to issue bonds therefor; that there is no good reason why a special election cannot be fixed for a day upon which a presidential election is held; that the ballots were in accordance with the provisions of the election law of 1891, and the provisions of that law apply; that although the election should be held void, the city has power under its charter, to erect and maintain a plant, and to borrow money therefor, provided that the cost does not exceed \$5,000; that no contract for the plant had been ordered or let, nor had the council determined to establish a plant, and that, therefore, the action was premature.

Respondent contended further, that no motion had been made in the court below to vacate the order complained of. Citing *Shinn's Pl. & Pr.*, 225; *Le Roux et al. vs. Circuit Judge (Bay)*, 45 M., 416 (314); *Lee vs. Schaack*, 10 N. W. R. (Minn.), 22; *Scripture vs. Burns*, 12 N. W. (Iowa), 760.

That mandamus will not lie to enjoin the doing of an act which by law lies in the discretion of the officer refusing to do it. *Willing vs. Circuit Judge (Jackson)*, 1 Doug., 302 (658); *Bradley vs. Circuit Judge (Branch)*, 1 Doug., 319 (93); *Smith et al. vs. Ft. St. & Elmwood Ry. Co.*, 17 M., 66; *Monroe vs. Circuit Judge (Wayne)*, 19 M., 296 (148); *Sweet vs. Auditor General*, 3 M., 427 (1031); *Burt vs. Highway Comrs. (Van Buren)*, 32 M., 190; *Pack vs. Suprs. (Presque Isle)*, 36 M., 377 (1367); *Peck vs. Suprs.*, 47 M., 477 (1514); *Houghton Co. vs. Aud. Genl.*, 36 M., 271 (1020); *Post vs. Sparta*, 63 M., 323 (1249).

Unless there has been a clear abuse of that discretion, *Tawas R. R. Co. vs. Circuit Judge*, 44 M., 479 (800); *Van Norman vs. Circuit Judge*, 45 M., 204 (827); *Scott vs. Circuit Judge*, 62 M., 532 (474); *Detroit vs. Circuit Judge*, 79 M., 384 (805).

That the granting or refusing of a preliminary injunction is not a matter of strict legal right, *Edwards vs. Mining Co.*, 38 M., 46.

That this court has never granted the writ to compel the reinstatement of a preliminary injunction, and it has only interfered to dissolve such injunction, when its issuance was absolutely illegal. *Scott vs. Circuit Judge*, 62 M., 532 (474), and cases cited.

Relator contended that the jurisdiction of this court in mandamus is not statutory but plenary, and that the writ may issue, even when other remedies exist, if they are not sufficiently speedy to prevent material injury. *La Grange vs. State Treasurer*, 24 M., 468 (1013); *Port Huron & G. Co. R. R. Co. vs. Circuit Judge*, 31 M., 456 (848); *Tawas R. R. Co. vs. Circuit Judge*, 44 M., 479 (800); *Mills vs. Circuit Judge*, 77 M., 210 (822).

815 CITY OF DETROIT vs. CIRCUIT JUDGE (Wayne), No. 13275½.

To dissolve an injunction restraining interference with use of space about the Central Market Building, for market purposes, upon a bill filed by lessees of stalls in said building.

Order to show cause denied February 1, 1893.

816 CITY OF CORUNNA vs. CIRCUIT JUDGE (Shiawassee), No. 14122½.

To compel respondent to grant a preliminary injunction restraining the receiver of a street railway company from operating certain "combination motors and passenger cars," without the consent of the common council, under an ordinance which provided that said company shall use only the so-called "Healy motors."

Order to show cause denied April 3, 1894.

817 DETROIT & ERIN PLANK ROAD CO. vs. CIRCUIT JUDGE (Macomb), No. 15518; 67 N. W., 531; 3 D. L. N., 153.

To vacate an injunction restraining relator from using, in the construction of its road-bed, material other than that prescribed by statute and such as, if used, will render said road-bed dangerous, unsafe and impassable.

Denied May 18, 1896, with costs.

818 BOARD OF SUPERVISORS vs. CIRCUIT JUDGE (Wayne), No. 15904, 106 M., 166.

To dissolve an injunction restraining the board from letting a contract for the construction of a county building, the acceptance of the bid for the work having received but a majority, and not a two-thirds vote.

Denied December 1, 1896.

819 DETROIT & LAKE ST. CLAIR PLANK ROAD CO. vs. CIRCUIT JUDGE (Wayne), No. 15148½.

To compel respondent to grant an injunction restraining the City of Detroit from entering and taking up a part of relator's roadway, in a street within the city limits, in order to pave the street.

Order to show cause denied October 11, 1895.

820 COMMON COUNCIL (Detroit) vs. CIRCUIT JUDGE (Wayne), No. 12051½.

To compel respondent to vacate an injunction restraining the passage of an ordinance, giving to an electric railway company a franchise to lay its tracks and operate its road in Porter street, which is twenty-six feet in width.

Denied June 20, 1891.

821 FORT ST. UNION DEPOT CO. vs. CIRCUIT JUDGE (Wayne), No. 12291½.

To dissolve injunction restraining relator from constructing its railway in the street upon which complainant's property abutts, pending proceedings for condemnation.

Denied October 7, 1891.

822 MILLS vs. CIRCUIT JUDGE (Wayne), 77 M., 210.

To set aside a preliminary injunction.

Denied October 30, 1889, without costs.

The injunction commanded relator to refrain from interfering with the construction and operation of an electric street railway system upon one of the avenues in the city of Detroit.

823 CITY OF DETROIT vs. CIRCUIT JUDGE (Wayne), No. 13459½.

To compel respondent to set aside an injunction requiring the common council to desist and refrain from granting permission to move a building across the trolley system of an electric street railway company, and from cutting said trolley wires, and from interfering with the operation of said trolley system.

Order to show cause denied April 11, 1893.

823½ UNION STREET RAILWAY COMPANY vs. CIRCUIT JUDGE (Saginaw), 4 D. L. N., 455; 71 N. W., 1073.

To compel respondent to issue a preliminary injunction restraining the City of Saginaw from revoking relator's franchise and removing its tracks from the city streets.

Denied July 13, 1897.

The ordinance granting the franchise to relator provided that it should pay for the cost of paving between its tracks and empowered the city in default of said payment to revoke the franchise and remove the tracks.

Held, that the contract is fully sanctioned by the statute, How., Sec. 3548; that inability to pay does not relieve relator from the consequences of the default, and that no judicial determination is necessary to determine such default.

824 DETROIT & BIRMINGHAM PLANK ROAD CO. vs. CIRCUIT JUDGE (Wayne), No. 13793; 97 M., 583; 98 M., 141.

To vacate an order modifying a temporary injunction, restraining an electric railway company from constructing an electric railway upon relators' road.

Order to show cause granted October 25, 1891, together with a restraining order pending the hearing.

Relator subsequently applied for an order for contempt against the Detroit Citizens' Street Railway Co. et al., for the violation of the restraining order. Respondents were discharged upon the hearing November 14, 1893, on the ground that the injunction did not cover the operation or repair of a track heretofore built or repairs made necessary by repaving.

Writ denied December 13, 1893, with costs.

825 E. T. BARNUM WIRE & IRON WORKS vs. CIRCUIT JUDGE (Wayne), 59 M., 272.

To vacate an order made restraining relator from trying an attachment suit, pending in the Superior Court of Detroit, in favor of an alleged creditor of relators, commenced prior to relators' assignment of its property for the benefit of its creditors.

Granted January 20, 1886.

826 JOACHIMSTAHL vs. CIRCUIT JUDGE (Wayne), No. 12296.

To vacate injunction restraining proceedings to recover possession of certain premises.

Denied November 13, 1891, with costs.

827 VAN NORMAN vs. CIRCUIT JUDGE (Jackson), 45 M., 204.

To require respondent to vacate an injunction, whereby the relator was restrained from proceeding with an action where the

bill upon which it was granted was devoid of substance, and did not support the application for the writ.

Granted January 12, 1881.

828 BALDWIN (Receiver) vs. CIRCUIT JUDGE (Wayne), No. 14061;
101 M., 432; 25 L. R. A., 739.

To compel respondent to issue an injunction restraining the prosecution of certain garnishment proceedings.

Denied July 10, 1894, with costs.

Plaintiff in the garnishee proceedings claims to have obtained a lien upon the fund. Baldwin vs. Circuit Judge, 101 M., 119 (472); Detroit & Birmingham Plank Road Co. vs. Circuit Judge, 98 M., 141 (824); Corunna vs. Circuit Judge, Supra (816).

829 HOGAN vs. CIRCUIT JUDGE (Wayne), No. 14844, 106 M., 254.

To vacate an injunction restraining the prosecution of an action against an insurance company, brought by relator, claiming to be the assignee of a policy of insurance, in Ionia County, and of garnishment proceedings, brought by different creditors of the assignor in Wayne County, the latter proceedings having been the first instituted.

Denied July 13, 1895, with costs.

830 ST. JOHNS NATIONAL BANK vs. CIRCUIT JUDGE (Clinton),
No. 16114½.

To require respondent to grant a temporary injunction restraining the prosecution of a suit at law, brought by the township of Bingham, to recover from relator the tax assessed to certain parties upon certain stock in the petitioning bank.

Order to show cause denied February 17, 1897.

The bill filed set forth that said parties had sold said stock

after the assessment and before demand for said tax; that relator has no adequate defense to said action at law, but has a good, substantial and meritorious defense in equity.

See *St. Johns Natl. Bank vs. Bingham Twp.*, 71 N. W., 588; 4 D. L. N., 288.

831 WALKER vs. CIRCUIT JUDGE (Wcyne), No. 16194; 4 D. L. N., 95; 70 N. W., 1031.

To vacate an order enjoining a sale under a decree in a foreclosure proceeding, where, at the solicitation of the defendant in that proceeding, relator had advanced the sum necessary to satisfy the mortgagee and taken an assignment of the mortgage and decree, it being contended that the assignment of the mortgage and decree amounted to the making of a new mortgage, and necessitated a new foreclosure.

Granted April 27, 1897, with costs against defendant.

832 KROLICK ET AL. vs. CIRCUIT JUDGE (Bay), No. 15665.

To dissolve a preliminary injunction issued out of the Circuit Court for the County of Bay, at the instance of one Miller, restraining relators "from taking possession of, or intermeddling with" a certain stock of goods upon which relators held chattel mortgages, which stock of goods relators had replevined from the sheriff of Sanilac County, who had seized the same upon a writ of attachment sued out by Miller in that county.

The goods had not been delivered to relators in the replevin case, but were in the hands of the coroner, who declined to deliver them because of the injunction, although relators had given a sufficient bond. The bill does not charge fraud but alleges that it will be several months before complainant can get judgment in the attachment case, and that she fears that relators will, unless restrained, take the stock, foreclose the mortgage and sell the goods.

Granted July 1, 1896, with costs.

Relators insisted that courts of equity will not grant an injunction in aid of an attachment upon personality, *Rollins vs. Van Baalen*, 56 M., 615; nor in aid of a levy upon personality, *Stoddard vs. McLane*, 56 M., 11; and that the injunction in the present case operates as an interference by the Bay Circuit Court with the process of the Sanilac Court, *Barnum W. & I. Wks. vs. Circuit Judge*, 59 M., 272 (825).

833 TAYLOR vs. CIRCUIT JUDGE (Wayne), No. 15845½.

To dissolve an injunction restraining relator from interfering, under a writ of restitution, with complainant's possession of certain premises.

Order to show cause denied October 6, 1896.

Relator had possession under a lease from complainant, to whom he had given a chattel mortgage, covering certain bar fixtures and other property, and upon default had surrendered possession.

Complainant foreclosed his mortgage and became the purchaser at the sale. Relator then commenced proceedings before a commissioner to recover possession, obtained judgment and procured the writ of restitution. Complainant then tendered the keys and demanded the rent due. Relator refused either to take the keys or to pay the rent, but afterwards threatened to take possession under the writ.

834 SCOTT ET AL. vs. CIRCUIT JUDGE (Gratiot), No. 12363.

To vacate an injunction restraining relators from entering upon certain lands belonging to complainant, for the purpose of constructing a drain thereon.

The circuit judge ruled that the finding of the jury of the necessity for taking complainant's land and the taking of it without compensation was unauthorized, and the verdict void.

Denied November 18, 1891, with costs.

835 DAY vs. CIRCUIT JUDGE (Wayne), No. 12309½.

To compel respondent to dissolve an injunction restraining relator from disposing of certain property, pending divorce proceedings commenced by relator's husband against her.

Order to show cause denied October 29, 1891.

836 LOUD vs. CIRCUIT JUDGE (Wayne), No. 14456.

To compel the dissolution of an injunction issued at the instance of relator's former husband to restrain the prosecution of suits at law instituted by her to compel the payment of certain sums which were, at the time of divorce, stipulated to be paid by the husband for the support of children, the custody of whom was committed to relator.

Order to show cause allowed October 3, 1894.

After answer, argument and submission, discontinued by stipulation.

Relator obtained a divorce; the decree gave her the custody of two children, a certain sum as permanent alimony, required defendant to purchase a residence to cost a given amount for complainant, placing the fee in the children and giving complainant a life estate therein, and further required defendant to pay a given weekly stipend for the support of the children.

The decree was modified by a written agreement between the parties, which provided that, instead of a stipulated sum, the defendant should pay for the care, support and education of the children. Defendant had failed to pay, and relator had brought several suits to enforce payment, as the claims accumulated.

In the first case she recovered judgment and it was paid. In the second she recovered judgment, but a motion for a new trial is pending. The third suit was recently instituted and was pending when the injunction was granted. Respondent contended that relator had sold the house and lot purchased under the decree, and that relator should account for the proceeds thereof, and insisted further that the whole matter was one for the consideration of a court of equity.

837 BURNS vs. CIRCUIT JUDGE (Muskegon), No. 14125½.

To vacate an injunction issued at the instance of a judgment creditor of relator's husband, restraining both from transferring certain shares of stock which it is alleged were transferred to relator by her husband after judgment rendered, without consideration, and in fraud of the rights of the judgment creditor.

Order to show cause denied April 17, 1894.

838 TOBACCO RIVER MILLING & MANUFACTURING CO. vs. CIRCUIT JUDGE (Clare), No. 15518½.

To vacate a preliminary injunction, restraining further proceedings at law after judgment, on the alleged ground that it was granted without notice and that there is no equity in the bill.

Order to show cause denied April 7, 1896.

839 BECKER ET AL. vs. CIRCUIT JUDGE (Saginaw), No. 15586½.

To vacate an injunction restraining plaintiff and the constable from proceeding upon an execution issued by a justice of the peace, where defendant had been garnisheed.

Order to show cause denied May 5, 1896.

840 CHIERA ET AL. vs. CIRCUIT JUDGE (Wayne), No. 13805, 97 M., 638.

To compel the dissolution of an injunction restraining relators, as owners of the majority of the capital stock of a Michigan corporation, from holding a meeting for the election of a board of directors, under the claim that a former election was invalid.

Denied December 13, 1893, with costs, on the ground that the case was within the jurisdiction, power and discretion of the circuit judge, and no abuse of discretion is shown.

841 HARMON ET AL. vs. CIRCUIT JUDGE (Wayne), No. 11961½.

To compel respondent to vacate an injunction.

Order to show cause denied May 12, 1891.

An injunction bill was filed against the People's Savings Bank of Detroit, and relator and others, residents of Windsor, Ont., to enjoin the bank from paying, and the other defendants from assigning or collecting a certain check, held by certain of the defendants and drawn upon the bank. A preliminary injunction was issued. Notice of the issuance of the injunction was served personally upon the Windsor parties, and the order for their appearance in the suit was published.

842 BUETTNER vs. CIRCUIT JUDGE (Wayne), No. 14122, 100 M., 179.

To compel respondent to dissolve an injunction, restraining a pastor from admitting or pretending to admit to membership any person without the consent of a majority of the church council, and from voting or offering or advising any person to vote at any meeting of said church, who did not sign the articles of association, or who was not admitted by a majority of said church council.

Granted May 4, 1894, without costs.

Held, that the statute does not determine the qualifications of church members, or the mode of their admission, and that those questions are purely of ecclesiastical cognizance.

843 CLINTON PLOW CO. vs. CIRCUIT JUDGE (Lenawee), No. 14836½.

To dissolve an injunction restraining the prosecution of relator's business on a bill filed charging the use of a company name, which it was claimed had been in use by complainant, the answer denying the allegations as to the use by complainant of the name.

Order to show cause denied April 16, 1895.

844 MURPHY ET AL. vs. CIRCUIT JUDGE (Presque Isle),
No. 13994½.

To compel the dissolution of a preliminary injunction restraining defendants (relators) from cutting and carrying away pine timber from certain lands, title to which is claimed by complainants, and the right to enter upon which lands is asserted under certain tax deeds, which complainants allege are void.

Order to show cause denied February 6, 1894.

845 CITY OF ALPENA vs. CIRCUIT JUDGE (Alpena), No. 13758,
97 M., 550.

To vacate an injunction, restraining the issuance of orders, warrants, etc., which was granted on the ground that the city acted in excess of its powers in that it had contracted before the collection of the fund out of which the contract price was payable.

Granted November 21, 1893.

Held, that the council in making contracts might anticipate the collection of the amount provided for in the annual budget.

846 KROLIK ET AL. vs. CIRCUIT JUDGE (Wayne), No. 16114; 4
D. L. N., 69; 70 N. W., 1132.

To set aside an order refusing to vacate an injunction restraining relators from enforcing certain chattel mortgages.

Denied April 27, 1897, with costs.

Held, that the court was not without jurisdiction in granting the injunction and the exercise of its discretion will not be disturbed.

847 CAMPBELL vs. CIRCUIT JUDGE (Kent), No. 15688; 3 D. L. N.,
805; 70 N. W., 141.

To compel respondent to dissolve an injunction.

Denied February 18, 1897, with costs.

One Shafer filed a bill against relator praying that the title to certain land of complainant be quieted, and also praying for an injunction to restrain the defendant from building a cement driveway and stone coping upon land claimed to belong to complainant and adjoining the boundary line between lands owned by the parties.

Relator contended that a court of equity has not jurisdiction to settle a dispute over a boundary line, and, therefore, that the court had no jurisdiction to grant an injunction.

Held, that while a court of equity has not jurisdiction to settle a dispute over boundary lines, yet if the case is brought within some other head of equity jurisprudence, the mere fact that there is involved in the question of the complainant's right the necessity for fixing the boundary line, will not oust the court of jurisdiction.

848 PORT HURON & GRATIOT RY. CO. ET AL. vs. CIRCUIT JUDGE (St. Clair), 31 M., 456.

To vacate order appointing receiver and to dissolve an injunction restraining the majority of the directors from the management and control of the corporate business.

Granted April 13, 1875.

Held, that a Court of Chancery cannot take from directors and vest in a receiver the management and control of a railroad company, except in proceedings under the statute to dissolve the corporation, and that the ex-parte appointment of the receiver and granting of the injunction, are more than irregular and are absolutely void as beyond the power of the court.

849 VANCE ET AL. (Village Trustees) vs. CIRCUIT JUDGE (Shiawassee), No. 14304, 102 M., 342.

To compel vacation of orders granting injunction and appointing a receiver with authority to pay debts, collect claims and continue the business.

Granted in part October 30, 1894.

The village had dealt with a co-partnership in relation to the location of its plant within the village, and the co-partners had afterwards formed a corporation and conveyed the assets to the corporation.

850 REYNOLDS ET AL. vs. CIRCUIT JUDGE (Genesee), No. 14809½.

To vacate an order appointing a receiver and directing an injunction restraining the trustee to whom a thirty-day chattel mortgage had been given, from proceeding to a sale under said mortgage.

Denied April 12, 1895, with costs.

Certain of the stockholders of a corporation "limited" filed a bill claiming that the mortgage was given to a stockholder as trustee for certain alleged creditors, naming said trustee as a creditor for a large amount; that it was fraudulently given, and that the corporation was not indebted as in the mortgage set forth.

851 PLESSNER vs. CIRCUIT JUDGE (Wayne), No. 14672½.

To set aside an order, entered July 31, 1894, appointing a receiver to take charge of the effects of a copartnership, where the property was delivered over to the receiver early in August.

Denied January 29, 1895, on the ground that the order complained of was an appealable order and courts will not by mandamus extend the time for review.

**852 RALPH ET AL. vs. CIRCUIT JUDGE (Shiawassee), No. 13997,
100 M., 164.**

To compel respondent to restore an order made by his predecessor, which respondent had vacated, appointing a receiver for the Owosso & Corunna Street Railway Co.

Granted May 4, 1894.

It appeared that the corporation was without a president, vice-president or secretary; that the trustees named in the mortgage given to secure the bond had refused to enforce the mortgage, and had signified their intention to resign their trust; that interest on the bonds remained unpaid; that there are tax and judgment levies and liens upon the corporate property, and that the municipality which granted its franchise had taken proceedings to repeal the same.

853 THOMAS ET AL. vs. CIRCUIT JUDGE (Wayne), No. 13262½.

To compel the vacation of an order appointing a receiver, upon judgment creditors' bill filed, and directing judgment debtors to assign.

Order to show cause denied January 18, 1892.

Held, that relator had an adequate remedy by appeal. *Perrin vs. Lepper*, 56 M., 351.

854 GYPSUM PLASTER & STUCCO CO. vs. CIRCUIT JUDGE (Kent), No. 14808, 105 M., 497.

To vacate an order appointing a receiver for the relator company on the ground that the appointee was at the time a large judgment creditor and also a large stockholder, but it appeared that the receiver had been acting for three months when the motion to vacate was made, and the appointing court had upon the motion reconsidered all matters pertaining to such appointment.

Denied May 28, 1895, with costs.

855 HALL ET AL. vs. CIRCUIT JUDGE (Wayne), No. 15853; 3 D. L. N., 728; 69 N. W., 643.

To vacate an order appointing a receiver upon a preliminary inquiry on a bill filed under 3 How. Stat., 8749 o.

Held, that the order, if not an absolute nullity, was improvidently issued, but that the order is appealable and mandamus should not be resorted to in such cases. Citing *Scott vs. Circuit Judge*, 58 M., 314.

Denied January 5, 1897, without costs.

856 MAXON vs. CIRCUIT JUDGE (Bay), No. 14617.

To compel respondent to vacate an order empowering a receiver to sell the assets of a co-partnership, both partners having prayed for a dissolution, it appearing that relator is insolvent; that complainant is indorser upon the co-partnership paper to a large amount; that for lack of funds the receiver is unable to insure the property; that there is a large mortgage upon the plant, on which interest is due and unpaid; that the plant has not been in operation for over a year, and that the machinery is depreciating in value.

Denied, without costs, January 23, 1895.

857 MERCHANTS & MANUFACTURERS' BANK OF DETROIT vs. CIRCUIT JUDGE (Kent), 43 M., 292.

To vacate an order appointing a receiver.

Held, that the appointment was absolutely void as having been made at the home of the circuit judge when there was no suit pending, but relator, having appealed from an order subsequently made, at the instance of the receiver, restraining the prosecution of the replevin suit brought by relator and that order having been reversed, an award of the writ is rendered unnecessary.

Decided April 14, 1880.

858 GRAY vs. BARTON ET AL., 62 M., 186-195.

Bill filed to restrain collection of judgment and for a new trial. Bill dismissed and complainant appealed.

Held, that in case of an abuse of discretion, respecting the granting of a new trial, the determination of the trial judge may be reviewed by mandamus.

Decided July 1, 1886.

859 DETROIT TUG & WRECKING CO. vs. CIRCUIT JUDGE (Wayne), 75 M., 360.

To compel respondent to grant a new trial.

Denied June 21, 1889.

The granting of a new trial rests in the discretion of the trial court, which, if not abused, cannot be interfered with by the Supreme Court.

To warrant such interference, the abuse ought to be so plain that, upon consideration of the facts upon which the trial judge acted, an unprejudiced person can say that there was no justification or excuse for the ruling made.

In applications for mandamus, the court must rely upon the facts set up in the answer of the respondent.

860 SHIMER vs. CIRCUIT JUDGE (Branch), 17 M., 67.

To vacate an order granting a new trial.

Denied May 13, 1868.

Held, that in the affidavit for the new trial there was something upon which the circuit judge was called upon to exercise his judgment. The question, therefore, was one intrusted to his discretion, and this court has no authority to review his conclusion.

861 STORK vs. SUPERIOR COURT JUDGE (Detroit), 41 M., 5.

To set aside an order granting a new trial.

Denied June 3, 1879.

Held, that an order granting a new trial does not finally dispose of any rights and is usually at least discretionary; and the Supreme Court will not review it simply because we would not have granted it, even though, as in this case, the party seems to have lost by negligence any very good claim to a new trial.

862 AETNA LIVE STOCK INS. CO. vs. CIRCUIT JUDGE (Wayne),
20 M., 220.

To compel vacation of order granting a new trial.

Denied April 20, 1870.

A motion for a new trial was made and opposed because (1) leave to make the motion had not been granted; (2) that the motion was not made within the time allowed by the rules and practice of the court; and (3) a bill of exceptions had been settled and signed and a writ of error issued and served, whereupon a motion for leave was made and granted, and by consent the argument was had at once and the new trial granted on condition that the writ of error be dismissed.

Held, that the matter was one of discretion and not open to review.

863 HESTER ET AL. vs. RECORDERS' COURT JUDGE (Detroit),
No. 11723½, 84 M., 562.

To compel respondent to set aside a verdict in condemnation proceedings, where one of the jurors had sat upon a former trial, in which the jury had disagreed and were discharged, and upon the preliminary examination as to his qualifications, had denied having formed or expressed an opinion as to the necessity of taking the land for public use, and relators had not discovered the fact that the juror had sat upon the former trial until after the verdict, which the court was asked to set aside.

Granted February 12, 1890.

**864 MOESTA ET AL. vs. RECORDERS' COURT JUDGE (Detroit),
No. 12049.**

To compel respondent to set aside verdict and grant a new trial.

Denied June 18, 1891.

Two jurors had sat in other cases of the condemnation of land for Boulevard purposes, but elsewhere located. The case is distinguished from the Hester case where the juror sat the second time in the same case.

865 THOMAS vs. CIRCUIT JUDGE (Washtenaw), No. 12740.

To grant a new trial on the ground of misconduct of jury.

Granted May 4, 1892, with costs.

The jury remained out for nearly 24 hours, and during the night were allowed to occupy the court room, wherein they had access to the files of the case containing the requests to charge, which had been submitted, not only upon this trial but upon other trials which had been had. It appeared that these files had been examined and the requests discussed, pending their deliberations.

866 CHURCHILL ET AL. vs. CIRCUIT JUDGE (Alpena), 56 M., 536.

To set aside a verdict and grant a new trial for misconduct of the jury.

Granted April 29, 1885.

Where it was shown that a jury not only sent for and obtained and drank intoxicating liquors in the jury room, and when taken to a hotel for their meals conversed with persons, made known how they stood prior to agreement, openly discussing the fact; inquired of the stenographer as to the outside sentiment respecting the case, and drank whisky and other liquors at the bar two or three times at the invitation of the landlord, and each

other, a trial judge is not competent to decide that the verdict was not thereby affected, and if he refuses to set aside the verdict on the ground that it was a just one, he usurps the functions of the jury. The presumption that the jurors were honest will not save the verdict. A verdict is incurably vitiated where evidence of public sentiment as to the case is allowed to reach the jury.

An order to show cause does not necessarily imply personal censure of the respondent; the review of judicial action is confined to legal errors, and the action itself is presumably conscientious.

Ex parte affidavits, returned by a circuit judge in response to an order to show cause why he should not grant a motion, will not be received if they were not used on the motion.

867 PALMER vs. CIRCUIT JUDGE (Saginaw), No. 12724.

To grant a new trial because of the misconduct of the jury.
Denied May 11, 1892.

Respondent was convicted of murder in the second degree. He insisted that the shooting was in self-defense. Both parties were armed, deceased with a revolver, and defendant with a gun. The jury was allowed to visit the scene of the shooting (a saloon).

It is claimed, that the order did not contemplate that the jury should take with them the gun and the revolver. Both were, however, taken and experimented with. The saloon keeper was allowed to explain certain of the incidents surrounding the tragedy, and to point out certain bullet holes in the wall and door and explain how made.

868 ARNOLD vs. CIRCUIT JUDGE (Calhoun), No. 15520½.

To arrest judgment and grant a new trial upon conviction of manslaughter, because during the impanneling of the jury, the regular panel was exhausted and the court ordered that a certain

number of good and lawful men be drawn from the several lists as returned from certain townships.

Order to show cause denied April 8, 1896.

Relator insisted that How. Stat., Sec. 7578, as amended in 1893, has no application to the case before the court; *People vs. Jones*, 24 M., 215; *Wise vs. Lumber Co.*, 86 M., 40.

It appeared on the face of the order that it was entered by consent, but it was insisted that counsel could not waive such a substantial right, *Swart vs. Kimball*, 43 M., 443; *People vs. Mangold*, 71 M., 335; *People vs. Jackson*, 8 M., 110; *Callanan vs. Port Huron Ry. Co.*, 61 M., 12.

869 WAITE vs. CIRCUIT JUDGE (St. Clair), No. 16357½.

To grant a new trial in a criminal case, because it is claimed that two of the jurors were not citizens.

Order to show cause denied June 9, 1897.

The circuit judge gave his reasons in writing for denying the motion. He says:

"The two jurors Kronner and Murray were questioned as to their citizenship under oath before the jury were finally sworn to try the cause. In that examination it developed that both were of foreign birth and both claimed their citizenship by reason of their fathers having become naturalized before they became of age. No objection was made to either of these jurors by the defendant and both sides announced themselves satisfied before the jury was sworn by the Court. * * * On the argument on May 29 the defendant's counsel demanded in writing that an issue be framed to try the question of the citizenship of these two jurors. * * * The prosecuting attorney objects to consideration of the statements made by these jurors when examined in the case of *People vs. McQuade*, and also to the manner of showing that juror Murray's father never took out his full papers in Lapeer County, for the reason that the showing by the clerk of Lapeer County should have been under oath. * * * I am of the opinion that the defendant must show affirmatively that these jurors are aliens and this he has failed to do even if his whole showing be considered. I am also of the opinion that the question of their citizenship having been entered upon before they were sworn and having been passed on by the court, they are concluded by it so far as is claimed as a ground for a new trial as a matter of right.

"The statute under which the issue is claimed on this motion, in my judgment, has no application to criminal cases, and for that reason the framing of the issue should be denied."

870 HICKS vs. CIRCUIT JUDGE (Wayne), No. 12834.

To grant a new trial.

Granted June 8, 1892, with costs.

It appeared that while the jury were inspecting premises the attorney for the defendant purchased and passed around, to the jury, cigars.

871 PRENTIS vs. CIRCUIT JUDGE (Marquette), No. 13092½.

To grant a new trial.

Order to show cause denied October 4, 1892.

Plaintiff recovered a verdict for \$6,300, but claimed a much larger sum. The reason relied upon by the relator here is that one of the jurors on his voir dire testified that he had no knowledge of the facts of the case, and had not formed or expressed an opinion in regard thereto, and neither relator or his attorneys had at that time any knowledge or suspicion that said juror had any knowledge of the cause, or had formed or expressed any opinion in regard thereto; but on the motion for a new trial relator showed that one Randolph, a witness in the cause, whose testimony related to the only disputed point in the case, was the father-in-law of said juror, and before the trial said witness had told the juror his story, and that said juror had before the trial expressed an opinion in the cause, and pending the deliberation of the jury, he had vigorously opposed any allowance to relator of the major portion of his claim. As to what occurred pending the deliberations of the jury, affidavits of the other jurors were presented.

872 GRAND RAPIDS L. & D. R. R. CO. vs. CIRCUIT JUDGE (Wayne), No. 11915½.

To compel respondent to set aside a verdict and grant a new trial, in a case where one of the jurors was taken sick during

the trial and the court, without the consent of counsel, directed the trial to proceed with eleven jurors.

Denied May 5, 1891, on the ground that error is the proper remedy.

See *McRae et al. vs. Grand Rapids, L. & D. R. R. Co.*, 93 M., 399, 17 L. R. A. 750, where the verdict referred to was reversed and a new trial ordered.

873 STERLING vs. CIRCUIT JUDGE (Wayne), No. 14162½.

To grant a new trial on the ground that the verdict was contrary to the weight of evidence.

Order to show cause denied May 2, 1894.

874 HICKS vs. CIRCUIT JUDGE (Wayne), No. 14061½.

To grant a new trial.

Order to show cause denied March 7, 1894, on the ground that the errors complained of are matters of record and relator's remedy is by appeal.

875 POTVIN vs. CIRCUIT JUDGE (Alpena), No. 15691½.

To compel respondent to set aside a verdict, grant a new trial and receive testimony offered under defendant's notice, the court having ruled that the matters set up in the notice, if shown, did not constitute a valid defense to the note sued upon.

Order to show cause denied July 1, 1896.

876 PEEL vs. CIRCUIT JUDGE (Wayne), No. 15842.

To set aside an order granting a new trial, in a case where judgment was entered May 17, 1895, a motion for a new trial had been made, heard and denied, and pending a settlement

of a bill of exceptions, on August 3, 1896, respondent suggested a re-argument of the motion upon which a new trial was granted, September 6, 1896.

Denied October 27, 1896, with costs.

877 McMULLEN vs. CIRCUIT JUDGE (Grand Traverse), No. 15651½.

To vacate an order granting a new trial, where the motion therefor was entered ten days after judgment, without leave first obtained, the rule giving one day in term to move, and at the hearing of the motion, additional affidavits were allowed to be read, copies of which had not been served with the service of notice of the motion, but had been served eleven days thereafter and before the hearing.

Order to show cause denied June 11, 1896.

878 BARKER vs. CIRCUIT JUDGE (Charlevoix), No. 14285½.

To require respondent to vacate an order granting a new trial.
Order to show cause denied July 10, 1894.

Action, assumpsit commenced before a justice, against relator, a resident of Chicago, Ill. Plea, the general issue with notice of set off. Judgment for plaintiff. Defendant appealed. On the trial it became necessary for plaintiff to prove the agency of one Downie, but he was not able to do so and asked leave to submit to a non-suit. Relator, however, objected, whereupon the court directed a verdict of no cause of action. Afterwards, plaintiff moved for a new trial and the same was granted.

879 KRAUS vs. CIRCUIT JUDGE (Wayne), No. 11781.

To compel respondent to set aside order granting new trial.
Denied February 25, 1891, with costs.

Relator had judgment before a justice, on a promissory note. Defendant appeared, but was not an attorney, and did not employ one. Notice of trial by jury was served upon appellant December 17, 1890, for the January term commencing January 6, 1891. On December 24, 1890, appellees served a notice of inquest, under Rule 99. On January 7, 1891, appellees took judgment under the second notice. The appellant was in court on the 6th and 7th waiting for his case to be called, but it was not called, and he did not hear the colloquy between court and counsel respecting the case.

880 POWER vs. CIRCUIT JUDGE (Wayne), No. 11785.

To compel respondent to grant a new trial.

Denied February 25, 1891, with costs.

Appeal from a justice of the peace by defendant, December 18, 1889. Case on printed docket January, April and September terms, 1890. Appellant did not appear by attorney. Notices of trial were personally served upon him. Judgment was taken November 11, 1890. Two days before the case was reached, a notice that the case would be reached on November 11, was sent by the circuit judge to appellant, and left by the sheriff with appellant's wife, at his residence. The contention of relator was, that he was out of the city and that his attorney had no notice of the fact that the case was likely to be reached.

881 LAPHAM vs. CIRCUIT JUDGE (Wayne), No. 12602.

To compel granting of a new trial.

Order to show cause issued March 1, 1892, but case afterwards discontinued by stipulation.

Relator appealed from Justice Court, but did not appear by attorney in the Circuit. He alleged that no notice of trial had been served upon him; that plaintiff's attorney did not keep

faith with defendant's attorney; that his attorney neglected to enter his appearance, and to properly attend to said cause.

882 LAPHAM vs. CIRCUIT JUDGE (Wayne), No. 12784.

To set aside a verdict which was rendered on the day the case was set for trial, it appearing that the attorney for defendant had notice that the case was coming on.

Denied, without prejudice and without costs, May 11, 1892.

It further appeared that under the rule motions for new trial should be made within five days; that after the lapse of five days defendant moved for a new trial; that the motion was denied upon the ground that the five days had elapsed and defendant should have moved the court for leave to make a motion for a new trial, and that no motion for leave had been made.

883 BARNES vs. CIRCUIT JUDGE (Wayne), No. 11751½.

To compel respondent to grant a new trial.

Order to show cause denied February 10, 1891.

The case in which the new trial was denied was affirmed in 86 M., 585. The ground of the motion for a new trial was that through the inadvertence of counsel no testimony was given to show that the husband had consented to the performance of the service for plaintiff's individual benefit. At the close of the testimony, counsel for defendant moved for a verdict upon the ground that the services belonged to the husband and not to plaintiff, and the court directed the jury accordingly.

884 MICHIGAN CENTRAL RAILROAD COMPANY vs. CIRCUIT JUDGE (Clinton), No. 12695½.

To vacate an order granting a new trial, in a negligence case, where relator claims that the testimony clearly showed that

plaintiff was guilty of contributory negligence, and the court directed a verdict for defendant, relator here.

Order to show cause denied April 5, 1892.

885 FRAZER (Pros. Atty.) vs. RECORDERS' COURT JUDGE
(Detroit), No. 16072; 4 D. L. N., 61; 70 N. W., 1042.

To vacate an order granting a new trial, in a criminal case, where three full terms of court had expired after conviction and sentence.

Granted April 27, 1897.

Held, that the statute, How.'s., Sec. 9576, limits the time within which a new trial may be granted and the order was without jurisdiction and is void.

886 O'BRIEN vs. RECORDERS' COURT JUDGE (Detroit), No.
13274½; 97 M., 607; No. 13287 (2 cases).

To compel respondent to grant a new trial.

Order to show cause denied on first application, January 10, 1893, on the ground that the petition did not set forth the record upon which the motion was denied.

Order to show cause denied on second application, March 8, 1893.

A supplemental petition was filed April 7, 1893. Denied April 11, 1893.

Relator was convicted of manslaughter upon the second trial. The principal ground relied upon was, that a witness for the people whose testimony was materially different from that given on the first trial, was ordered under arrest for perjury pending the trial.

Respondent answered that the order was not given in the presence of the jury, and that the order was, that the witness be taken into custody at the conclusion of the trial. It was claimed that the arrest was made as the jury were retiring from the

court room. Respondent replied that the court had no knowledge of the arrest, until after the verdict. All the other questions raised are reviewable on error.

**887 HOME SAVINGS BANK ET AL. vs. CIRCUIT JUDGE (Wayne),
No. 16300; 4 D. L. N., 325; 71 N. W., 638.**

To vacate a judgment and grant a new trial.

Denied, with costs, June 7, 1897.

The judgment had been recovered against an insolvent estate on appeal from the action of commissioners on claims, and relators, as creditors of the estate, moved to vacate the same, on the ground, (1) because they were never notified of the appeal, or of the trial of said cause; (2) because the judgment was made upon a stipulation made by the attorneys for the claimant, and the attorneys for the estate, without notice to the relators and without giving them an opportunity to contest the claim; (3) because the bond and notice were not given to the adverse parties; (4) because said judgment, appeal and proceedings were collusive and a fraud upon the creditors.

The Supreme Court found that while the Probate Court did not require notice of the appeal to be served upon the relators, they in fact had notice thereof; that it appears from the return that the judgment was not based upon a stipulation but upon proofs taken in open court; that the bond on appeal was given as directed by the Probate Court and to the proper parties, under How.'s, Secs. 5908-5910, and that there was no evidence of collusion.

On the hearing of the motion in the court below it was treated as a motion for leave to intervene for the purpose of making the motion.

888 WEBBER ET AL. vs. CIRCUIT JUDGE (Montcalm), No. 12887½.

To compel respondent to grant a new trial.

Order to show cause denied June 15, 1892.

A trial had been had and a verdict and judgment for defendant therein, and plaintiff seeks to review the entire trial proceeding by this proceeding.

889 ROSE vs. CIRCUIT JUDGE (Newaygo), 74 M., 332.

To grant a new trial.

Granted April 12, 1889.

Judgment in an attachment suit was rendered for want of an appearance and plea, and exceeded the sum sworn as due in the affidavit (with interest) and plaintiff had failed to remit the excess.

890 MANUFACTURERS' MUTUAL FIRE INS. CO. vs. CIRCUIT JUDGE (Gratiot), 79 M., 241.

To compel the vacation of an order granting a new trial.

Denied January 17, 1890.

The county in which the case was first heard was detached from the judicial circuit, of which it had formed a part, and made a part of the new circuit, the judge of which granted the motion for a new trial.

Held, that there is no law which disqualifies a circuit judge from rehearing a motion or cause which has been passed upon by another judge sitting in the same court. Also, that a circuit judge has authority to set aside judgments and grant new trials after the expiration of the term at which they were entered. See No. 493½.

891 ALDERMAN vs. CIRCUIT JUDGE (Montcalm), 41 M., 550.

To compel vacation of order granting a new trial.

Denied, 1879.

The trial judge acted upon the supposition that he was disqualified.

Held, that the judge had a right in the exercise of his discretion to make the order, and this court, in the exercise of its discretion, is not disposed to inquire whether his interest was such as to disqualify him.

892 CAMPAU vs. SUPERIOR COURT JUDGE (Detroit), 40 M., 630.

893 BURNS vs. SUPERIOR COURT JUDGE (Detroit), 40 M., 630.

To require respondent to grant new trials in cases in which relators had lost the benefit of their exceptions, by reason of the death of the trial judge before the bill of exceptions could be settled.

Granted April 23, 1879.

894 WRIGHT vs. SUPERIOR COURT JUDGE (Detroit), 41 M., 726.

To grant a new trial, in a case where the judge, who presided at the trial, had died pending settlement of the bill of exceptions.

Granted October 22, 1879.

895 ROMAN CATHOLIC PARISH OF THE SACRED HEART OF SAINT MARY vs. CIRCUIT JUDGE (Wayne), No. 11917.

To compel respondent to set aside verdict and grant a new trial.

Granted April 2, 1891, with costs.

The verdict had been taken during a recess of the court, in the absence of both judge and counsel.

896 HELWIG vs. CIRCUIT JUDGE (Wayne), 73 M., 258.

To vacate a verdict and allow a new trial, where, when the testimony was all in and the parties had rested, the court ad-

journeyed for the day, and the attorney for the plaintiff failed to appear at the adjourned hour to argue the case, which argument the plaintiff desired to have made and requests to charge presented.

Granted January 16, 1889.

Held, that the plaintiff has a right to withdraw his case or abandon his suit at any time before taking the verdict of the jury, and that the circuit judge under the circumstances should have directed a non-suit.

897 BROWN ET AL. vs. CIRCUIT JUDGE (Alpena), No. 11918.

To compel respondent to set aside verdict.

Granted April 22, 1891, with costs.

After the jury had announced that they had agreed upon a verdict, plaintiff asked leave to submit to a non-suit, but the court refused to permit it, and took the verdict. Relator cited *Mer. Bank vs. Schulenberg*, 54 M., 49; *Helwig vs. Circuit Judge*, 73 M., 258 (896).

898 LANGWORTHY (Receiver) vs. CIRCUIT JUDGE (Bay), No. 16277½.

To vacate an order directing a verdict for defendants and grant a new trial.

Order to show cause denied April 27, 1897.

Petitioner, appointed by an Illinois court as receiver of an Illinois corporation, brought suit in the Bay Circuit Court upon an assessment made under a decree of the Illinois court. Pending the trial the court raised the question of plaintiff's right to bring the action, denied an application to amend and directed a verdict for defendants.

899 PATTERSON (Admr.) vs. CIRCUIT JUDGE (Clinton),
No. 16194½.

To vacate a judgment and verdict and grant a new trial.

Order to show cause denied March 29, 1897.

Plaintiff, as administrator, sued upon two promissory notes, aggregating \$2,800.

Defendant pleaded the general issue and gave notice of set off, consisting of board, washing, mending and care of decedent, medical services for decedent and his son, etc., amounting to \$3,100. Upon the trial defendant offered his proofs as to his set off and offered testimony tending to show that the notes were to be paid in board, care, etc., of decedent, during his natural life. The jury returned a sealed verdict as follows:

"Verdict of the jury is that all claims held by Dr. McPherson against the estate of Levi T. Baxter involved in this case are hereby cancelled."

Upon this verdict the court entered judgment of no cause of action and gave defendant costs.

900 CHICAGO & G. T. RY. CO. vs. CIRCUIT JUDGE (Genesee), No.
12137, 89 M., 549.

To vacate an order granting a new trial.

Denied December 30, 1891, with costs.

901 DAIBER vs. CIRCUIT JUDGE (Wayne), No. 12071½.

To compel granting a new trial.

Order to show cause denied June 18, 1891.

902 CAPITOL CIGAR CO. vs. CIRCUIT JUDGE (Iosco), No. 12029.

To compel respondent to set aside order granting a new trial.

Denied June 2, 1891, with costs.

903 DENNISON vs. CIRCUIT JUDGE (Genesee), 37 M., 281.

To vacate an order for a new trial in ejectment.

Denied October 9, 1877.

Defendant paid to the clerk of the court the damages assessed and the costs, entered a motion for a new trial under the statute, and upon affidavit showing payment, presented to the court, a new trial was granted.

Relator insisted that the clerk was not authorized to receive the amount of damages and costs; that a portion of the amount paid to the clerk consisted of National bank notes, and that respondent had no notice of the application for a new trial.

904 BOYCE vs. CIRCUIT JUDGE (Osceola), 79 M., 154.

To compel the granting of a second trial in ejectment.

Granted January 8, 1890.

The judgment upon the former trial was rendered April 27, 1886.

The case was removed to the Supreme Court, and on June 9, 1887, the judgment of the court below was affirmed. November 25, 1889, plaintiff applied for a second trial. The Circuit Court denied the motion on the ground that more than three years had elapsed since the rendition of the judgment in the Circuit Court upon the verdict, but the Supreme Court held that the three years commenced to run from June 9, 1887. Citing *Clark vs. Circuit Judge*, 62 M., 355 (773).

905 STEVENS vs. CIRCUIT JUDGE (Montcalm), No. 14258.

To grant a new trial in an ejectment case.

Order to show cause granted June 19, 1894.

Relator brought ejectment against William Castel in 1869. In September, 1869, defendant had judgment. New trial granted and had December, 1885, resulting in a judgment for

defendant. Judgment affirmed 63 M., 111. Defendant died February, 1888, and in December, 1888, a new trial was granted, but the order granting same was vacated on the application of the administrator.

January 23, 1889, relator began another suit against the heirs-at-law of William Castel.

March 7, 1891, trial had and judgment for defendant. One of the defendants died and suit was revived against remaining defendants.

March 31, 1892, relator moved for a new trial and on June 7, 1892, motion was denied.

Relator insists that inasmuch as three years had not elapsed after judgment against him, he is entitled to a new trial under How. Stat., Sec. 7822. Citing *Dennison vs. Circuit Judge*, 37 M., 285 (903).

906 O'BLINSKIE vs. CIRCUIT JUDGE (Kent), 34 M., 62.

To vacate an order in an ejectment case, brought against relator, denying the motion, (1) for leave to move for a new trial, and (2) for a new trial.

Granted April 19, 1876.

The judgment was entered for plaintiff August 26, 1872. Additional and further finding at request of defendant filed June 5, 1874. Writ of error sued out July 15, 1874. Judgment affirmed January 8, 1875. Remittitur filed January 28, 1875. The motion upon which the order complained of was granted was made September 19, 1875; heard January 14, 1876, and decided February 4, 1876.

Held, that the time for taking a new trial as a matter of right, should date from the day that judgment could have been taken on the completed finding.

907 DEMAREST vs. CIRCUIT JUDGE (Newaygo), No. 15332½.

To vacate an order granting a new trial in an ejectment case, where the court concluded that a ruling made upon the trial was erroneous and the only question raised is as to the correctness of the ruling.

Order to show cause denied January 7, 1896, on the ground that the matter of granting a new trial was within the discretion of the circuit judge.

908 HOFFMAN vs. CIRCUIT JUDGE (St. Clair), 37 M., 131.

To compel respondent to grant a new trial in an ejectment case, wherein there had been a non-suit.

Denied June 19, 1877.

Held, that an application to set aside a non-suit is addressed to the discretion of the court below and the statute has no reference to such a case. The statute intends to give the parties a second trial upon the facts, and the case is only brought within it where it appears that one trial has already been had.

909 GILMAN vs. CIRCUIT JUDGE (Wayne), 21 M., 372.

To vacate an order granting a new trial in an action of ejectment.

Denied October 5, 1870.

The case had been twice tried. The first trial had been reversed upon a writ of error to the Supreme Court. On the second trial verdict and judgment passed for relator. An application was made, under Sec. 4589 of the Comp. Laws, and a new trial was granted.

Held, that the new trial in question is the first new trial under this section; that if a judgment has been wrongfully obtained as by error of law or fact, it is subject to reversal, being reversed the case stands the same as though no such judgment had ever been rendered.

910 REYNOLDS ET AL. vs. CIRCUIT JUDGE (Newaygo), No. 15329; 67 N. W., 529; 3 D. L. N., 185.

To vacate an order granting a new trial after the affirmance of the judgment on appeal to the Supreme Court.

Denied May 26, 1896, with costs.

911 NAGEL vs. CIRCUIT JUDGE (Wayne), No. 14671½.

To set aside an order granting a new trial in a case where respondent set aside the verdict of his own motion.

Order to show cause denied January 29, 1895.

912 ZOLTOWSKI vs. RECORDERS' COURT JUDGE (Detroit), No. 16168; 4 D. L. N., 84; 70 N. W., 1018.

To vacate an order granting a new trial in a street opening proceeding, under Act No. 26, Public Acts of 1882.

Granted April 27, 1897, with costs against the City of Detroit, on the ground that under Sec. 11 of the Act, the court had no power, after a like motion had been made and denied and the verdict of the jury had been confirmed by the court, to grant a new trial.

913 BACKUS ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12341, 89 M., 209.

To set aside order granting a new trial in a condemnation proceeding.

Granted November 19, 1891, with costs.

914 TALBOT vs. CIRCUIT JUDGE (Berrien) No. 13934½.

To vacate an order granting a re-hearing on an application for mandamus against a village council, where an issue had been framed and on the day set for taking testimony, respondent did

not appear and the writ was granted, and subsequently on the application of the village council a re-hearing was granted.

Order to show cause denied January 2, 1894.

915 LYON vs. CIRCUIT JUDGE (Ingham), 37 M., 378.

To set aside an order for a further hearing in a case where, on appeal to the Supreme Court, the decree had been affirmed by an equal division of the court.

Granted October 17, 1877.

916 WALKER vs. CIRCUIT JUDGE (Van Buren), No. 15689½.

To vacate an order granting a re-hearing in a chancery case.

Order to show cause denied July 1, 1896, citing Chancery Rule No. 81, and Barnes vs. Circuit Judge, 97 M., 212 (919).

917 KRIELING vs. CIRCUIT JUDGE (Muskegon), No. 16074.

To set aside so much of an order granting a re-hearing in a chancery cause, as imposed, as a condition, the payment of certain amounts aggregating \$294.57.

Denied, with costs, February 11, 1897.

918 CASE vs. CIRCUIT JUDGE (Lenawee), No. 14814.

To vacate an order setting aside a decree of divorce.

Denied April 18, 1895, with costs.

It appeared that the return of the officer was not in fact true.

919 BARNES vs. CIRCUIT JUDGE (Kent), No. 13754, 97 M., 212.

To compel respondent to vacate an order granting a rehearing in a chancery case, in which the decree was entered April 1, 1892, but no enrollment had been had.

Denied October 24, 1893, with costs.
See Stockley vs. Stockley, 93 M., 307.

920 MILLER ET AL. vs. CIRCUIT JUDGE (Lenawee), No. 15329½.

To vacate an order granting a re-hearing in a chancery cause, on petition therefor made within ten days after entry of decree.

Order to show cause denied January 7, 1896, on the ground that the matter was within the discretion of the court below.

921 MYERS vs. CIRCUIT JUDGE (Wayne), No. 12805.

To vacate an order refusing a re-hearing in a chancery cause.
Granted June 30, 1892, with costs.

Relator was complainant in a bill to set aside a mortgage executed by her, the execution of which was alleged to have been fraudulently obtained. It appeared that she was an ignorant woman; that no testimony had been taken in the case; that her interests had been grossly neglected, and a decree against her obtained.

922 LANGE ET AL. vs. CIRCUIT JUDGE (Muskegon), No. 15695½.

To vacate an order granting a rehearing, in a proceeding by the State of Michigan for the sale of certain lands for delinquent taxes, after the time for appeal had elapsed; where the petition for rehearing was without the certificate of counsel required by Rule No. 81, and the court at the hearing thereof allowed such certificate to be filed nunc pro tunc; and where such certificate is that of the counsel who appear for the petitioner.

Order to show cause denied July 7, 1896.

923 HITCHCOCK (Admr.) vs. PROBATE JUDGE (Genesee), No. 13954, 99 M., 128.

To compel respondent to vacate an order setting aside an order disallowing a claim filed against an estate, and granting a rehearing.

Granted February 20, 1894, without costs.

The widow of decedent filed a claim based upon an antenuptial agreement which was disallowed by the probate judge, on the ground that the husband had by will given a legacy in lieu of the debt. The widow then filed her election to take under the statute and not under the will, and asked leave to file another claim and have the disallowance set aside, which was granted.

Held, (1) A judge of probate has no power to set aside his own adjudications and grant rehearings.

Corby vs. Judge of Probate, 96 M., 11 (414).

(2) An application for a mandamus in such cases is properly made to the Supreme Court where the circuit judge was, before taking his seat upon the bench, one of the attorneys in the matter.

924 DE HASS vs. CIRCUIT JUDGE (Newaygo), 46 M., 12.

Held, that mandamus to settle a case for review will not issue to a judge who has resigned since filing his answer to the order to show cause. Relief should be asked from his successor.

Denied April 13, 1881.

925 ADRIAN FURNITURE MANUFACTURING CO. vs. CIRCUIT JUDGE (Lenawee), No. 12837, 92 M., 295.

To extend time to settle bill of exceptions.

Granted June 10, 1892, with costs.

Judgment was entered May 29, 1891. Time to move for a new trial was extended to June 15, 1891. Motion for a new trial was entered June 11, 1891, heard and denied May 12, 1892. In the meantime there had been no extension of time in which to settle a bill of exceptions.

926 SCHULER ET AL. vs. CIRCUIT JUDGE (Kent), No. 11779.

To compel respondent to consider an application for extension of time to settle bill of exceptions.

Granted February 11, 1891, with costs.

Judgment was rendered upon trial by the court, on October 24, 1890. Findings had been filed, and on October 31, amendments thereto were proposed which were not finally disposed of until February 24, 1890. A further extension of time was asked for, December 22, 1890, which the court refused, holding, that the time in which appellant could take out his writ had expired October 24, 1890; that no writ of error had been taken out, and the time within which such writ could issue had not been extended.

927 BARBIER vs. CIRCUIT JUDGE (Bay), No. 16363.

To grant an extension of time of fourteen days to prepare and settle a bill of exceptions, where counsel for both parties to the cause had already stipulated for such extension.

Granted, with costs, September 14, 1897.

928 MICHIGAN CENTRAL RAILROAD COMPANY vs. CIRCUIT JUDGE (Cass), No. 16373.

To grant an extension of time to settle a bill of exceptions.

Denied, with costs, June 22, 1897.

Judgment was rendered January 15, 1897. It was agreed between counsel that relator should have until the first day of the next term (February 15, 1897) to settle a bill of exceptions. On February 24, 1897, order entered extending time sixty days from February 15. On April 15, relator's counsel telegraphed respondent as follows: "Will you extend time for settling bill of exceptions in Honeyman case sixty days?" to which respondent replied: "Yes, if I have the power." On May 15, relator

made an ex parte application for a further extension of time, which the court granted, with leave to opposing counsel to move to vacate said order. On May 29, a motion was made to set aside said order and on the hearing counsel for relator conceded its irregularity under Sub. 6 b of Circuit Rule No. 47.

Relator's counsel moved for a further extension of time which motion was denied, on the ground that relator was guilty of laches; that relator had within ten days after the judgment procured a transcript of the charge of the court to the jury but did not ask for a transcript of the testimony until May 15, four months after judgment.

929 TURNER vs. RECORDERS' COURT JUDGE (Detroit), No. 14652½.

To compel the respondent to extend the time for the settlement of a bill of exceptions in a criminal case, sixty days having already been granted, which had expired and nothing had been done.

Order to show cause denied January 22, 1895.

The reasons set forth in the application were, that the defendant's attorney was a candidate for office and did not attend to the matter, and that defendant was without means.

930 TILDEN vs. CIRCUIT JUDGE (Wayne), 44 M., 515.

To vacate an order extending the time for settling a case, where the proofs were taken in open court and the application was not made until after sixty days from the date of the decree, and the time allowed does not exceed the statutory period of three months.

Denied October 27, 1880.

931 LENHOFF vs. CIRCUIT JUDGE (Saginaw), 82 M., 565.

To vacate an order extending time for settling a bill of exceptions.

Denied October 24, 1890.

The plaintiff in the case had verdict July 9, 1890, and on the same day an order was made extending the time to July 24, 1890, for either party to move for judgment on the verdict or for a new trial, or to settle a bill of exceptions. On July 24, a motion for a new trial was heard and denied and judgment was entered on the verdict. On the same day an order was entered extending the time to settle a bill of exceptions to October 1, 1890. The June term at which the case was tried was extended to September 30, 1890. Court convened October 6 for the October term and on that day defendant's counsel presented a bill of exceptions for settlement.

Held, that where the time for settling a bill of exceptions has been regularly extended during the term at which the case is tried, the circuit judge may settle the same at any time thereafter at his discretion, and he is not deprived of this right because the time limited in the previous order has expired. Citing *Teller vs. Circuit Judge*, 11 M., 60 (955), and *White vs. Campbell*, 25 M., 463.

932 GRAND RAPIDS & INDIANA R. R. CO. vs. CIRCUIT JUDGE (Wexford), No. 11820.

To compel vacation of order extending time to settle bill of exceptions.

Order to show cause issued February 24, 1891. No return made.

Judgment for defendant March 13, 1890. On February 3, 1891, plaintiff served a copy of a bill of exceptions with notice of application for settlement thereof on defendant's attorney. At the hearing defendant objected to the signing of the bill of exceptions, on the ground that the time for settling same had

passed, whereupon the court made an order extending the time in which to settle the bill of exceptions for fifteen days from and after February 9th instant.

933 MOROSS vs. CIRCUIT JUDGE (Macomb), No. 15143½.

To compel respondent to sign a bill of exceptions in a criminal cause, where relator was convicted January 12, 1894; time extended to October 23, 1894, and bill was presented May 31, 1895, and application heard and denied in August, 1895.

Order to show cause denied October 10, 1895.

934 PRATT vs. CIRCUIT JUDGE (Genesee), No. 12099.

To compel respondent to settle and sign a bill of exceptions.

Order to show cause granted July 1, 1891.

Answer filed July 6, 1891, alleging that since the issue of the writ respondent had signed the bill.

935 HUGHES vs. CIRCUIT JUDGE (Genesee), No. 15904½.

To compel respondent to grant an extension of time to settle a bill of exceptions.

Order to show cause denied November 10, 1896.

Petition re-filed January 4, 1897, and ordered, January 8, 1897, that the Circuit Court exercise his discretion as to settling the bill.

936 DE MOSS vs. CIRCUIT JUDGE (Van Buren), 41 M., 725.

To compel the settlement of a bill of exceptions, where the party preparing same had done all in his power to comply with

the various orders for its settlement and had completed and furnished the bill in due time.

Granted October 22, 1879.

937 COLE vs. CIRCUIT JUDGE (Ingham), 77 M., 619.

To vacate an order striking from the files a bill of exceptions heretofore signed and filed, and for other relief.

Motion to vacate order denied, but respondent is directed to proceed and settle bill of exceptions as now presented, November 13, 1889.

The bill of exceptions which was stricken from the files was reproduced for settlement and signature by defendant, and plaintiff proposed that same be amended by including therein the testimony of a number of witnesses which were named. The court declined to settle the bill unless the proponent furnished a transcript of the testimony of the witnesses named.

Held, that if further testimony is desired by the court to enable him to properly settle a true bill, he should direct the stenographer to transcribe the same from his minutes and file such transcript free of charge; that no costs could be taxed by either party therefor, and that the stenographer is an officer of the court for said purpose and subject to the order and direction of the court, at least to that extent.

938 GALLOWAY vs. CIRCUIT JUDGE (Wayne), No. 13889½.

To compel respondent to strike from the files a bill of exceptions and sign the bill presented by relator, as appellant, where respondent had signed an amended bill or substitute presented by the appellee.

Order to show cause denied December 12, 1893.

939 COE ET AL. vs. CIRCUIT JUDGE (Berrien), No. 15373.

To strike a bill of exceptions from the files because not settled within the time fixed by the orders extending the time, and to vacate an order staying proceedings.

Granted, as to the order staying proceedings, but the bill of exceptions was permitted to stand, February 19, 1896, with costs against defendant.

The return set forth that the correspondence between the attorneys indicated clearly that both had practically agreed upon an extension of time to settle the bill. It appeared that although a bond had been filed it was defective.

940 WALKER vs. CIRCUIT JUDGE (Wayne), No. 14836.

To set aside the settlement and signing of a bill of exceptions in a case where judgment was entered on August 24, 1894, at the June term of court, which continued until September 11, 1894, and no order extending the time had been entered during said term, but on February 25, 1895, the bill was signed.

Granted April 30, 1895, with costs.

Ruled by Cleveland vs. Stein, 14 M., 333; Adrian Furn. Mnfg. Co. vs. Circuit Judge, 92 M., 295 (925).

941 CRANE vs. CIRCUIT JUDGE (Wayne), 24 M., 512.

To compel respondent to incorporate certain evidence bearing upon a question raised by the bill of exceptions.

Granted April 16, 1872.

942 MILLER vs. CIRCUIT JUDGE (Wayne), No. 13098.

To compel the incorporation of certain matter in a bill of exceptions, in a suit wherein relator is plaintiff and one Hanley is defendant.

Order to show cause issued October 4, 1892. Peremptory writ granted in default of answer December 24, 1892, with costs against defendant Hanley.

943 FOWLER vs. CIRCUIT JUDGE (Manistee), 31 M., 72.

To compel amendment to bill of exceptions.

Denied January 7, 1875.

Held, that relator had waived his right to the relief sought.

944 HAMILTON ET AL. vs. CIRCUIT JUDGE (Calhoun), 28 M., 267.

To compel respondent to incorporate certain proceedings into a bill of exceptions in a criminal case.

Granted October 28, 1873.

The proceedings sought to be introduced were those had upon a motion to strike from the files a rejoinder to a replication to a plea to the jurisdiction, and to default the defendant for want of rejoinder, a motion for leave to file a second rejoinder and a motion to quash the information.

945 MORLEY vs. CIRCUIT JUDGE (Wayne), No. 14626.

To compel respondent to file and incorporate in a bill of exceptions his reasons for denying a motion for a new trial, in a case where no request was made therefor until the bill of exceptions was settled, some five months after the motion was denied, and the return sets forth that the motion was based upon alleged errors in rulings during the trial, and in order to comply with the request a re-argument of the motion would be necessary.

Denied January 31, 1895, with costs.

946 HUNT vs. CIRCUIT JUDGE (Kalamazoo), 39 M., 123.

To require respondent to sign a bill of exceptions, where the

time had expired, but counsel had stipulated to extend it.

Granted June 18, 1878.

947 CODDE vs. CIRCUIT JUDGE (Wayne), No. 14807.

To compel the respondent to sign a bill of exceptions.

Denied April 14, 1895, the return setting forth that the bill as presented did not correctly set forth respondent's action respecting a motion for a new trial.

948 SANBORN vs. CIRCUIT JUDGE (Wayne), No. 16113½.

To compel respondent to settle and sign a bill of exceptions to review an order made pending a trial, in the matter of an appeal from an order of the Probate Court allowing relator's account as executor, requiring relator to file an itemized account of his receipts, expenses and disbursements as executor and an accurate statement of the property in his hands, his disposition of the property named in the inventory, of all accumulations and profits and all investments of the funds of said estate.

Order to show cause denied February 17, 1897.

949 BUBLITZ vs. CIRCUIT JUDGE (Bay), No. 15642.

To compel respondent to sign a bill of exceptions in an action of replevin, brought under How. Stat., Sec. 8372, to recover certain cattle which had been impounded, where the court upon the trial discovered that there was but one surety on the bond given to the sheriff, and on its own motion directed the discontinuance of the suit and the return of the property, and refused to sign a bill of exceptions, on the ground that there was but a single question involved and that no bill of exceptions was necessary.

Granted June 10, 1896, with costs against defendant.

950 LE MONTAIS vs. CIRCUIT JUDGE (Wayne), No. 14699.

To settle a bill of exceptions.

Denied February 28, 1895, with costs.

Judgment March 2, 1894. Time extended, by ex parte orders, to September 26, 1894. On September 28, 1894, bill served and noticed for October 8, 1894. By direction of court hearing postponed to October 15, 1894. Opposing counsel insisted that the time had expired; that the bill as presented did not fairly and justly present the issue and that a transcript of the stenographer's minutes had not been procured, and that no proper bill could be settled or amendments made in the absence of such transcript. The circuit judge returns that the relator had been guilty of laches, that the bill presented was not a proper one and that he could not settle the same at that time without a copy of the testimony, the obtaining of which would occasion further delay.

951 FAUST vs. CIRCUIT JUDGE (Calhoun), 30 M., 265.

To require respondent to sign a bill of exceptions to bring up for review on writ of error proceedings on habeas corpus.

Denied October 7, 1874.

Held, that the proper remedy was by certiorari, or by habeas corpus in the Supreme Court.

952 HARBAUGH vs. CIRCUIT JUDGE (Wayne), 32 M., 258.

To require respondent to settle and sign a bill of exceptions.

Denied June 15, 1875.

Appellant had prepared a bill of exceptions and submitted the same for settlement. After some controversy and oral amendments counsel for the adverse party presented an entirely new bill as a substitute, which the court against objection signed.

Held, that while the course pursued was irregular and an abuse

of discretion, the bill signed presented substantially all the questions sought to be raised by appellant.

953 BEERS vs. CIRCUIT JUDGE (Wayne), Nos. 12667, 12803½.

To compel respondent to sign and settle a bill of exceptions.

Order to show cause denied April 5, 1892, and again June 7, 1892.

Upon the first application it was claimed that the bill presented had been agreed to by the attorneys, but the court stated that he desired to make some additions thereto. Upon the second application it was claimed that the court had interpolated certain matter in the bill and the same was not correctly or fairly stated.

954 CHAFFEE vs. CIRCUIT JUDGE (Ingham), No. 13201½.

To compel the settlement of a bill of exceptions.

Granted December 1, 1892, with costs.

955 TELLER vs. CIRCUIT JUDGE (Wayne), 11 M., 60.

To compel respondent to settle a bill of exceptions, in a case tried by the court without a jury, the settlement being resisted (1) upon the ground that the bill had not been prepared within the twenty days, which the court had first allowed, but after that time had expired the court made another order extending the time, and (2) because no written finding had been requested.

Granted December 2, 1862.

956 RAYL ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12570.

To compel signing of a bill of exceptions.

Granted March 18, 1892, with costs.

The trial court directed a verdict but no judgment had been

entered thereon for defendant. Two extensions of time of 60 days each had been granted to settle the bill. Its preparation had been assigned to one of the attorneys for plaintiffs. After his death, it was discovered by relators that although he had taken out a writ of error, no bill of exceptions had been signed. His affairs were in confusion, and many of the exhibits which had been turned over to him could not be found.

The Supreme Court was of opinion that the delay had been excused.

957 HEATON ET AL. vs. CIRCUIT JUDGE (Wayne), No. 12301.

To compel respondent to sign bill of exceptions.

Granted October 27, 1891.

Respondent answered that a member of the household of the attorney for relator was sick with diphtheria and respondent declined to hear him.

958 CUMMER vs. CIRCUIT JUDGE (Wexford), No. 12080½.

To compel respondent to settle and sign a bill of exceptions.

Order to show cause denied July 1, 1891.

The facts are stated in Olson vs. Circuit Judge, supra, 597.

959 BURDICK vs. CIRCUIT JUDGE (Newaygo), No. 13933.

To compel settlement of bill of exceptions, where the return alleges that the bill, as presented, did not state correctly the substance of the testimony given, and respondent is unable to make the corrections in the absence of a copy of the testimony, which appellant had obtained an extension of time of six months to enable him to procure, but which he had not obtained.

Denied January 7, 1894, with costs.

960 POPE vs. RECORDERS' COURT JUDGE (Detroit), No. 15143;
64 N. W., 728; 2 D. L. N., 559.

To compel respondent to sign a bill of exceptions in a criminal case, where objections were raised by the prosecuting attorney to the bill as presented, and the court declared itself unable to settle the dispute without a transcript of the stenographer's minutes and refused to order such copy at the people's expense.

Denied October 23, 1895.

But held, that relator could not be compelled to furnish a copy of the testimony; the recorder should fix a day for the settlement of the bill, and at such time he should proceed upon the bill and such amendments as may be offered by the prosecuting attorney to consider the matter and settle such bill as in his judgment is proper.

961 GILLIES vs. CIRCUIT JUDGE (Kent), No. 15130, 106 M., 687.

To compel respondent to vacate an order requiring relator, upon the submission of a bill of exceptions on appeal, to procure from the stenographer and furnish counsel for appellee in the suit, a copy of a portion of the testimony taken on the trial, to enable him to prepare amendments to the bill of exceptions.

Denied October 22, 1895, without costs.

Held, that inasmuch as the statute relating to the duties of the stenographer of the Kent Circuit (3 How. Stat., Sec. 6534 e 2) provides that the appellant may tax as costs stenographer's fee, and that the transcript procured may be used by the opposite party in proposing amendments to the record, the court may require appellant to furnish the opposite party with a copy of the stenographer's notes necessary for the preparation of the amendments.

962 O'BRIEN vs. RECORDERS' COURT JUDGE (Detroit), No. 13266.

To compel respondent to settle a bill of exceptions in a crimi-

nal case, where relator was convicted and sentenced June 26, 1891, and a motion was made to settle the bill October 3, 1892. In the meantime several terms of court had intervened, and no order had been made extending the time within which exceptions might be presented.

Denied January 17, 1893.

963 GORDON vs. RECORDERS' COURT JUDGE (Detroit), No. 13775.

To compel respondent to sign a bill of exceptions on behalf of relator who had been convicted of the murder of his own daughter.

Denied January 17, 1894.

The relator contended that but a single question was involved, viz., as to whether his wife was a competent witness against him, and the bill as presented contained only the testimony of the wife and the court insisted that the testimony of the relator should be included.

964 HARRISON vs. CIRCUIT JUDGE (Van Buren), No. 15140.

965 HARRISON vs. CIRCUIT JUDGE (Van Buren), No. 15148.

To vacate orders extending time for settlement of testimony in chancery causes on appeal, where the testimony was taken in open court, the decrees entered May 10, 1895, time extended June 28, ninety days, September 27 to December 1, 1895, and the only excuse offered was the stenographer's refusal to transcribe his minutes until promised payment therefor by a responsible person.

Granted October 23, 1895, with costs in each case against complainant in the chancery cases.

966 KNUDSON vs. CIRCUIT JUDGE (Gogebic), No. 12345½.

To vacate sentence and allow bill of exceptions to stand as if signed before sentence.

Order to show cause denied November 18, 1891.

967 BUMP ET AL. vs. CIRCUIT JUDGE (Ionia), No. 14625.

To compel respondent to hear and determine, on its merits, an application for an extension of time, within which to settle a chancery cause upon appeal, the court having held that it was without jurisdiction to grant the extension asked for.

Granted January 30, 1895, with costs.

It appeared that appellants were without fault and that the delay was chargeable to the stenographer. The court held that in respect to said matter the stenographer must be regarded as an officer of the court. Cameron vs. Calkins, 43 M., 191; Lake S. & M. S. Railway Co. vs. Circuit Judge, 89 M., 5 (975); Gram vs. Wasey, 45 M., 223; Tilden vs. Circuit Judge, 44 M., 515 (930).

968 STONE ET AL. vs. CIRCUIT JUDGE (Newaygo), No. 12568.

To compel respondent to grant an extension of time within which to claim and perfect an appeal from a decree of foreclosure.

Denied March 3, 1892, with costs.

A decree was entered October 31, 1891. Relators petitioned to vacate the decree and set aside the commissioner's report and order pro confesso, and permit relators to file a sworn answer. The petition was denied, but an order was made opening the decree and report for the purpose of deducting an admitted excess of \$1,378.21, and allowing relators to make proof of any further payments. On December 28, 1891, a hearing was had, at which time a decree was entered deducting the excess aforesaid, and relator Chester A. Stone was decreed to be personally

liable for the amount found due on the note and mortgage, although it is claimed by relators that it appears upon the face of complainant's bill that an action at law to recover said mortgage debt had been barred for nearly four years, when said bill was filed and no proof was made removing said bar. Relators filed a petition to correct said decree and on February 6, moved for an extension of time within which to claim and perfect an appeal, noticing said motion for February 6, but the motion was denied because of defective notice thereof.

Relators thereupon renewed the motion and noticed it for February 15, 1892, when the motion was denied.

969 NICHOLS vs. CIRCUIT JUDGE (Macomb), No. 15202.

To vacate order extending time to settle case.

Granted November 19, 1895, with costs against defendant in the chancery cause.

Decree entered November 7, 1894; November 24, 1894, claim of appeal filed; November 27, 1894, enrollment; December 31, 1894, time for settling case extended thirty days after January 7, 1895; February 6, 1895, further extension of sixty days; April 9, 1895, time extended thirty days, from and after April 8, 1895; October 17, 1895, time extended until October 25, 1895; October 19, notice of filing bond and for the approval thereof, and of settling case was served; October 24, 1895, case settled and signed; November 2, 1895, bond approved.

970 KINNEY vs. CIRCUIT JUDGE (Lenawee), 12 M., 25.

To compel the respondent to settle the testimony in a chancery case.

Granted October 31, 1863.

The court in vacation delivered to the clerk his decision in writing in favor of defendant; on the next day defendant's coun-

sel verbally informed the plaintiff's counsel of the decision, which was the only notice he received from any source. On October 4, thereafter the plaintiff's attorney signed a stipulation consenting to the taxation of defendant's costs. Within ten days thereafter the case was prepared and served upon the attorney for defendant and notice given for settling the same by the judge at the time fixed; the defendant's attorney objected to the settlement because the case was not prepared and served within ten days after the oral notice of the decision.

Held, that under the statute the clerk must at least serve notice of the judgment on the successful party, and written notice must be served upon the other party before the ten days will commence to run.

**971 WATERMAN ET AL. vs. CIRCUIT JUDGE (Calhoun),
No. 15516½.**

To compel respondent to settle the testimony taken in open court in a chancery cause, where decree was entered March 23, 1894; application was at once made to the stenographer for a transcript of his minutes; said transcript, of about 1,300 pages, was delivered to relators May 2, 1895; counsel for relators reduced the same to narrative form, and on August 14, 1895, delivered same to counsel for the opposite side, who stated that it would take some time to examine the same; that on February 20, 1896, said last named counsel for the first time objected because the testimony had been reduced to the narrative form; that relators' counsel had been prevented by sickness from taking further action at the time; that on March 23, relators gave notice of the settlement for March 25, and on April 1, 1896, the court, while doubting his right to settle the case, because of the delay, refused to sign the case as presented, having some doubt as to the application of Act No. 186, Laws of 1895, to a case in which the decree was entered before the act was passed, but stated that

on presentation of the entire record he would settle and sign the same on April 10.

Order to show cause denied April 7, 1890.

972 SWARTHOUT (Admr.) vs. CIRCUIT JUDGE (Bay), No. 16198.

To require respondent to settle the testimony in a chancery cause, after the time had been extended the full four months, and that time had expired.

Denied with costs, April 17, 1897.

973 HAZZARD vs. CIRCUIT JUDGE (Lenawee), No. 16047.

To compel respondent to settle the testimony in a chancery cause, on appeal by defendant to the Supreme Court.

Granted February 9, 1897, with costs against complainant.

The time had been extended the full four months. Appellant gave notice of settlement for the last day. At the hearing on said application defendant's counsel presented the testimony, a copy of which had been served upon complainant's counsel. The latter objected on the ground that the case presented for settlement did not conform to the requirements of Act No. 186, Public Acts of 1895.

974 HOLTON vs. CIRCUIT JUDGE (Gratiot), No. 16392½.

To require respondent to settle the testimony in a chancery cause.

Order to show cause denied June 22, 1897.

Relator filed a bill for divorce, an order pro confesso was entered, testimony taken and decree entered dismissing the bill.

Upon presentation of the testimony the court ordered that the testimony taken in a prior case between the same parties be included. Relator contends that said order is oppressive in that it involves an expense which he is unable to pay.

975 LAKE SHORE & MICH. SOUTHERN RY. CO. ET AL. vs. RECORDERS' COURT JUDGE, No. 12096, 89 M., 5.

To compel respondent to vacate order directing clerk to transmit verdict roll, and copy of order confirming same, to the common council, pending appeal, and grant an extension of time to prepare a case for settlement, it appearing that the delay was due to the volume of testimony, and the failure of the court stenographer to report it, due diligence having been shown.

Granted in the alternative June 30, 1891.

976 FLINT & PERE MARQUETTE R. R. Co., vs. CIRCUIT JUDGE (St. Clair), No. 12074½.

To compel respondent to find the facts and conclusions of law. Order to show cause denied June 18, 1891.

Abandonment proceedings. Held, that the proceeding was a special one under the statute, and circuit judge was not required to present findings. An appeal lies as in any other chancery cause.

977 EGGLESTON vs. CIRCUIT JUDGE (Kent), 50 M., 147.

To compel respondent to allow the filing of exceptions to special findings.

Denied February 27, 1883.

The findings were filed in May, 1880. In April, 1882, leave was asked to file exceptions. Held, that relator had been guilty of laches.

978 SUTHERLAND vs. THE GOVERNOR, 29 M., 320.

To compel the issuance of a certificate, showing that the Portage Lake & Lake Superior Ship Canal and Harbor had been con-

structed in conformity with the acts of congress, making a grant for the same, and the acts of the legislature of this State.

Denied May 12, 1874.

Held, that the governor of the State, as to the exercise of the authority conferred upon him, is not subject to coercion by judicial process.

In addition to authorities cited in the notes to the reported case, see *Hovey (Governor) vs. Shuck*, 11 L. R. A. (Ind.), 763 and notes; *Robb vs. Stone (Governor)*, 23 L. R. A. (Mo.), 194; *Cromellian vs. Boyd*, 26 Neb., 181; *Territorial Insane Asylum vs. Woldley (Ariz.)*, 8 L. R. A., 188; *Greenwood Cemetery Land Co. vs. Routt*, 17 Colo., 156.

In the last case the governor was a member of the Board of Land Commissioners and the duty devolved upon that board, and the court while recognizing the general rule laid down in other cases, held that an act of the governor, as to which he has no discretion, in the exercise of some power neither political nor essentially governmental, but specially enjoined upon him, may be compelled by mandamus, when he refuses to perform such act, and by his refusal a party is deprived of his property or other legal right without any plain, speedy and adequate remedy in the ordinary course of law.

979 AYERS vs. THE GOVERNOR AND STATE BOARD OF AUDITORS, 42 M., 422.

To require the board to take action under Act No. 168, Laws of 1879, relative to contracting for the publication of the Supreme Court reports.

Granted January 13, 1880.

Held, that while the court will not interfere with the discretion of the governor, nor subordinate him to its process, nor will it review the exercise of political and executory functions, when not ministerial, State officers have many duties which the courts will compel them to perform. The remedy by mandamus is not precluded by the fact that respondent may be liable, as for a misdemeanor. A private person who would be a competent bidder under a State law for letting a contract, may appear as relator by his own counsel in a mandamus proceeding to compel State officers to carry out the law, if the public interest requires

prompt action, and the attorney-general declines to appear for him. The rule rejecting the intervention of private complaints against public grievances is one of discretion and not of law. Judicial discretion is always involved in mandamus cases, concerning the relief as well as other questions.

980 TURNBULL vs. GIDDINGS (President) and ALWARD (Secretary of the Senate), No. 13382.

981 BARKWORTH vs. SPEAKER AND CLERK OF THE HOUSE OF REPRESENTATIVES, No. 13383, 95 M., 314.

To compel respondents to receive certain protests and enter the same on the journals of their respective bodies.

Denied April 14, 1893.

Held, that mandamus will not issue unless it clearly appears that the person to whom it is directed has the absolute power to execute the mandate of the court.

982 DEWEY vs. STATE BOARD OF AUDITORS, 32 M., 191.

To require the respondents to act upon a claim of the relator for extra compensation for services performed in the compilation of the Compiled Laws of 1871, in accordance with the provisions of a joint resolution of the legislature of 1875.

Denied June 9, 1875.

Held, that the board of State auditors are made by the constitution an independent tribunal, over which the courts have no supervisory control, and the Supreme Court has no jurisdiction by mandamus to coerce or direct their action.

983 ELLIS vs. BOARD OF STATE AUDITORS, No. 15145; 65 N. W., 577; 2 D. L. N., 750.

To compel respondents to make a settlement with relator under

the provisions of joint resolution No. 16, passed by the legislature of 1895.

Denied December 24, 1895, on the ground that the resolution did not authorize the board to compromise the claim or surrender any part of the same.

984 CITY OF LANSING vs. STATE BOARD OF AUDITORS, No. 15146; 69 N. W., 723; 3 D. L. N., 653.

To compel respondent to audit and allow an account for police and fire protection to State property, under Sec. 14, Title 10, Act No. 405, Local Acts 1893, entitled "An act to incorporate the City of Lansing," which provided for an assessment of State property by the municipality for that service.

Denied December 24, 1896.

985 KELLEY vs. BOARD OF STATE AUDITORS, No. 14966½.

To compel respondents to audit and allow relator's bill as circuit judge, for expenses incurred in going to and fro in the discharge of the duties of his office, and for hotel bills paid while holding court out of his own county.

Order to show cause denied June 19, 1895.

986 DETROIT FREE PRESS CO. vs. BOARD OF STATE AUDITORS, 47 M., 135.

To set aside an award of a contract for State printing.

Denied October 26, 1881.

987 EAST SAGINAW SALT MANUFACTURING COMPANY vs. BOARD OF STATE AUDITORS, 9 M., 326.

To compel the allowance of the bounty under the act approved February 15, 1859, Laws of 1859, p. 551.

Granted November 5, 1861.

The act of 1859 gave a bounty of ten cents upon each bushel of salt manufactured in the State, while the act of 1861, Laws of 1861, p. 305, gave a bounty of ten cents per barrel.

Held, that relators had acquired a vested right to the bounty offered by the act of 1859 upon all the salt manufactured before the law of 1861 took effect.

987½ SMITH vs. BOARD OF STATE AUDITORS, No. 11558, 85 M., 407.

To compel allowance of a claim for State bounty under Act No. 23, Laws of 1864.

Denied May 5, 1891.

988 FLINT & PERE MARQUETTE RAILWAY CO. vs. STATE BOARD OF AUDITORS, No. 14443, 102 M., 500.

To compel respondent to audit its claim for interest on a judgment for costs against the State.

Held, that under How. Stat., Secs. 8984 and 7756, relator was entitled to interest, but Sec. 7757 does not require the auditing of the account for interest by the board of state auditors.

The writ is therefore denied, November 20, 1894.

990 McPHERSON ET AL. vs. SECRETARY OF STATE, No. 12774; 92 M., 377; 16 L. R. A., 475.

To compel respondent to cause notice of the election of electors of president and vice-president, in the manner provided by How. Stat., Sec. 240.

Denied June 17, 1892.

The relator attacked the validity of Act No. 50, Laws of 1891.

991 GIDDINGS vs. SECRETARY OF STATE, No. 12895; 93 M., 1; 16 L. R. A., 402.

To restrain respondent from causing notice of election of senators under Apportionment Act of 1891, and compel him to give such notice under Act of 1885.

Granted in part July 28, 1892.

992 BOARD OF SUPERVISORS (Houghton) vs. SECRETARY OF STATE, No. 12884; 92 M., 638; 16 L. R. A., 432.

To compel respondent to cause notice of the election of two representatives from the County of Houghton, regardless of the division of the county by the Apportionment act of 1891, and to give the notice under the law of 1885.

Granted in part, and respondent directed to give notice under the law of 1881, July 28, 1892.

993 ADSIT vs. SECRETARY OF STATE AND STATE BOARD OF CANVASSERS, No. 11721; 84 M., 420; 11 L. R. A., 534.

To compel the secretary of state to give notice of an election to fill a vacancy in the office of circuit judge, and the board of state canvassers to meet and examine the tabulated statement of the votes cast for such office and determine the result.

Granted February 5, 1891.

994 HOPKINS vs. SECRETARY OF STATE, No. 15449.

To compel respondent to give notice for the election at the April election, of a circuit judge in the tenth judicial circuit, to fill a vacancy caused by resignation, refusal being upon the ground that a successor cannot be elected until November election, and in the meantime the vacancy may be filled by appointment by the governor.

Denied March 3, 1896, without costs.

995 CRANE vs. SECRETARY OF STATE, 51 M., 195.

To compel respondent to issue patents for certain State lands.
Denied July 2, 1883.

Held, that the power did not reside in respondent, but in the governor.

996 JENKING vs. SECRETARY OF STATE, 79 M., 305.

To compel the filing of articles of association under Act No. 187; Laws of 1875.

Denied January 2, 1890.

Held that by Sec. 36 of Act No. 232, Laws of 1885, Act No. 187, Laws of 1875 is repealed; and that said Act No. 232, Laws of 1885, in so far as it authorizes the formation of corporations for manufacturing or mercantile purposes, or any union of the two, is valid legislation, and any corporation organized under it can be created for all of its purposes.

997 ISLE ROYAL LAND CORPORATION vs. SECRETARY OF STATE, 76 M., 162.

To compel respondent to file a copy of relators' articles of association, under How. Stat., Sec. 4098.

Denied July 11, 1889.

998 CENTRAL OIL-GAS STOVE CO. vs. SECRETARY OF STATE, No. 12736.

To compel the recording of articles of association.

Granted May 4, 1892.

Relator, a foreign corporation, refused to pay the franchise fee provided for by Act No. 182, Laws of 1891, hence the refusal to record the articles.

999 ROSENTHAL vs. SECRETARY OF STATE, No. 12740½.

To compel the filing of articles of association under Act No. 155, Laws of 1879.

Respondent refused to file until a franchise fee of \$5 was paid, claiming such fee under Act No. 182, Laws of 1891.

Granted May 4, 1892, with costs.

1000 IRON RANGE & HURON BAY R. R. CO. vs. SECRETARY OF STATE, No. 12285.

To compel respondent to record amended articles of incorporation, his refusal being based upon the failure to pay a franchise fee, under Act No. 182, Laws of 1891.

Granted October 27, 1891.

1001 DETROIT CHAMBER OF COMMERCE vs. SECRETARY OF STATE, No. 15552; 67 N. W., 897; 3 D. L. N., 252.

To compel respondent to receive and file amended articles of association and accept the franchise fee under How. Stat., Sec. 4866.

Granted June 30, 1896, without costs.

1002 OVID ELEVATOR CO. vs. BLACKER (Secretary of State), No. 12547, 90 M., 466.

To compel respondent to file a copy of a resolution extending the term of relator's corporate existence.

Granted February 17, 1892.

1003 SENECA MINING COMPANY vs. SECRETARY OF STATE, 82 M., 573; 9 L. R. A., 770.

To compel respondent to file relators' articles of association

in renewal of its corporate existence, under Act No. 129, Laws of 1889.

Granted July 2, 1890. Opinion filed October 31, 1890.

The case involved the question as to when the constitutional amendment, adopted at the April election of 1889, took effect, as a part of the constitution, and it was held that it took effect from the time of its ratification by the popular vote.

1004 CONNECTICUT MUTUAL LIFE INSURANCE CO. vs. COLLIER
(State Treasurer), 31 M., 5.

To compel respondent to accept a given sum in full of the tax imposed upon premiums collected, and to issue duplicate receipts therefor, it being the contention of relator that the tax should not be levied upon what it claimed to be rebated premiums.

Denied January 6, 1875.

1005 AUDITOR GENERAL vs. STATE TREASURER, 45 M., 161.

To compel respondent to transfer the surplus and specific taxes in the treasury of the primary school interest fund.

Granted January 7, 1881.

1006 BRESLER vs. STATE TREASURER, 60 M., 40.

To compel payment of a balance claimed to be due relator as holder of the bills of the Government Stock Bank.

Denied February 10, 1886.

No mandamus can issue to a state officer to compel him to perform any but some unquestionable and legally defined duty. A right under statute to have the state treasurer pay some definite amount, may be enforced by mandamus; but where the liability is not recognized by the State, no suit will lie to determine it,

and what cannot be done against the State directly, cannot be done under color of suit against a State officer.

**1007 MOLINE PLOW CO. vs. STATE TREASURER, No. 14653,
105 M., 57.**

To compel respondent to refund the amount which was exacted from relator under Act No. 79, Laws of 1891, and paid by it under protest.

Denied April 16, 1895, with costs.

Relator insisted that the act had been declared unconstitutional in *Coit vs. Sutton*, 102 M., 324; that the payment made was involuntary, and that the act invalidated the contracts made by relators, unless its provisions were complied with. *First National Bank vs. Watkins*, 21 M., 489; *Nickodemus vs. East Saginaw*, 25 M., 456.

1008 CUMMINGS vs. STATE TREASURER, 7 M., 365.

To compel respondent to receive from relator and receipt to him for the balance of the purchase price of certain lands, for which certificates had been issued to relator's assignor, the respondent claiming the right to cancel said certificates.

Granted Nov. 9, 1859.

1009 DUFFIELD vs. HOLMES (State Treasurer), 3 M., 544.

To compel respondent to pay to relator such sum as he was entitled to as holder of some of the circulating notes of the Government Stock Bank, out of the avails of the stock deposited with the treasurer.

Granted 1855.

Held, that an averment that such notes were issued by the bank necessarily implied that they were first duly countersigned

as required by the bank charter, and that circulating notes are not such claims as required proof at their presentation to the treasurer within the provisions of the charter.

1010 BAY CITY vs. STATE TREASURER, 23 M., 499.

To compel respondent to deliver up certain bonds issued under the railroad aid law. Laws of 1869, p. 89.

Granted October 18, 1871.

It appeared that respondent acted in good faith under an honest misapprehension of duty, and therefore no costs were granted.

1011 THURBER vs. WHITTEMORE (State Treasurer), 2 M., 307.

To compel respondent to pay to relator, who was speaker of the house of representatives, the sum of \$97, for services as a member of the legislature, upon a certificate drawn and signed by the clerk of the house, and countersigned by relator as such speaker.

Denied 1852.

Held, that under Secs. 15 and 17, of Art IV, of the constitution, the speaker of the house is entitled to the same compensation as representatives, and cannot, as speaker, receive any additional per diem or mileage.

1012 COUNTY TREASURER (Houghton) vs. STATE TREASURER, 40 M., 320.

To compel the payment of a warrant issued by the auditor-general in favor of Houghton County.

Denied January 28, 1879.

The application showed that the warrant had been issued for a larger sum than what is claimed by the county to be really due, by a mistake of computation, and the court held, that relator

should surrender the old warrant to the auditor-general and apply for a new one.

1013 LA GRANGE TOWNSHIP vs. STATE TREASURER, 24 M., 468.

To compel respondent to deliver up certain bonds which had been deposited with him under the railroad aid law.

Granted April 16, 1872.

Held, that mandamus is the proper remedy for enforcing a specific legal right, for which there is no other adequate legal remedy. It is not excluded by other legal remedies which are not adequate to secure the specific relief needed, nor by the existence of a specific remedy in equity. Replevin is not the proper remedy to obtain possession of papers filed in the probate office. The custody of such papers belongs to the officer in charge, and mandamus to compel the custodian to deliver them up is the only safe process.

1014 IMPERIAL LIFE INS. CO. vs. STATE TREASURER, No. 13447, 95 M., 513.

To compel respondent to deliver to petitioner sufficient of the securities deposited as security for policy holders to pay matured death claims, and to deliver over the surplus of such securities over and above remaining risks.

Denied May 31, 1893, with costs.

1015 IMPERIAL LIFE INSURANCE CO. vs. STATE TREASURER ET AL., No. 13645.

To compel respondent to apply surplus in his hands to the payment of death claims.

Order to show cause granted July 26, 1893.

1016 AUDITOR GENERAL vs. PARSELL (Late Warden State House of Correction, etc., Ionia), No. 14450.

To compel respondent to pay over certain moneys appropriated by him as salary, etc., after the order removing him had been made by the board of control, and before his final ouster by quo warranto proceedings instituted by the attorney-general.

Order to show cause issued, but case undetermined.

1017 HOUGHTON COUNTY vs. AUDITOR GENERAL, 9 M., 141.

To compel respondent to pay over to relator a balance remaining unpaid, of the one-half of certain specific taxes, which had been paid into the state treasury by mining corporations situated in said county.

Granted January 11, 1861.

The respondent contended that the application is not in due form and that there had been no legal appropriation of the moneys claimed.

Held, that the order was sufficient in form and substance, and that the statute of 1853 (Comp. Laws, Sec. 990), is a standing appropriation of one-half of the specific taxes, collected from mining corporations, to the counties respectively

1018 SEAMAN vs. AUDITOR GENERAL, 1 Doug., 276.

To compel respondent to issue a warrant to relator for certain surplus moneys.

Denied 1844.

On a sale of land for taxes, relator became a purchaser and received the county treasurer's certificate of sale, which, under the statute, entitled him to a deed in two years from the time of sale, unless the land was redeemed. Before the two years had expired the same land was again sold for the taxes of the following year, and the amount paid in exceeded the amount of the taxes, interest and charges. The excess was, under the statute,

deposited in the State treasury to the credit of the owner or claimant of the land, and remained therein until after the time for redemption under the first sale had expired, and a deed of the land had been executed to relator, who then claimed the surplus money.

Held, that he was not entitled to receive it, he not being the owner of the land within the meaning of the statute.

1019 BOARD OF SUPERVISORS (Ottawa) vs. AUDITOR GENERAL, 69 M., 1.

To compel payment over of taxes assessed for township, school and highway purposes, for certain years, which had been collected through respondent's office.

Denied March 2, 1888.

Held, that the State cannot be sued in its own courts without its consent. *Ambler vs. Auditor-General*, 38 M., 746 (1023).

1020 HOUGHTON CO. vs. AUDITOR GENERAL, 36 M., 271.

To compel a credit with taxes assessed on lands returned as delinquent, the county treasurer having failed to make return in due season.

Denied April 17, 1877.

Mandamus lies only to enforce strict legal rights and will not be granted to enforce the doing of an act which, by law, lies in the discretion of the officer refusing to do it. The statute requires all returns to be made before the last day of March, and another statute makes it the duty of the auditor general to make out the list for publication on the first day of July following. The return was not received in the present case until July 25. See *Houghton Co. vs. Auditor-General*, 41 M., 28 (1041).

1021 BOARD OF SUPERVISORS (Sanilac) vs. AUDITOR GENERAL, 68 M., 659.

To compel respondent to issue his warrant on the state treasurer for the proportion alleged to be due to the County of Sanilac, out of the tax ordered to be levied in 1886, for interest money alleged to be due on the sale of swamp lands, as the share belonging to Sanilac County.

Denied March 2, 1888.

The auditor general insisted, not only that no duty is cast upon him by law to ascertain and pay over such share, but also that the law has given him no money that can be so applied.

1023 AMBLER (County Treasurer) vs. AUDITOR GENERAL, 38 M., 746.

To compel payment over of moneys claimed to have been unlawfully charged against the county, and deducted upon annual settlements.

Denied June 4, 1878.

1024 A. P. COOK CO. vs. AUDITOR GENERAL, 79 M., 100.

To compel respondent to cancel certain drain taxes claimed to be an illegal charge upon relator's land.

Denied December 28, 1889.

Held, that Act No. 44, Laws of 1883, providing for the reassessment upon patented lands of unpaid taxes, assessed while the lands were part-paid, applies to drain taxes assessed upon part-paid swamp lands, under Act No. 216, Laws of 1861.

1025 BOARD OF SUPERVISORS (Chippewa) vs. AUDITOR GENERAL, 65 M., 408.

To compel respondent to set aside the rejection by him of

taxes assessed upon railroad lands, which had been granted in aid of the construction of the road, and exempted from taxes for a limited time.

Denied April 14, 1887.

1026 METCALF vs. AUDITOR GENERAL, 38 M., 94.

To compel the payment of costs in a penal action brought by a supervisor for obstruction of a highway.

Order to show cause denied January 8, 1878.

1027 FEATHERLY vs. AUDITOR GENERAL, No. 11741.

To compel respondent to vacate an order canceling the designation of relator's paper as the one for publication of the lists of lands to be sold for taxes, in the County of Iosco, in the year 1891.

Denied January 21, 1891.

The auditor general whose term expired December 31, 1890, had undertaken, under Sec. 54 of Act No. 195, Laws of 1889, to designate the newspapers in which such lists, with the notice of the filing thereof, should be published, under section 52 of said act, in the absence of the filing of any petition.

Relator contended that contract relations existed, but respondent insisted that the act done was a mere designation, which the auditor general had power to revoke, and that there could be no valid designation until the petition was filed.

1028 BROWNE ET AL. vs. AUDITOR GENERAL, No. 12008.

To compel audit of account for printing tax sales.

Granted in part June 19, 1891, with costs.

Facts similar to those in last case cited, except that here certain of the work had actually been done before the designation was revoked.

1029 RICE vs. AUDITOR GENERAL, 30 M., 12.

To compel respondent to refund the purchase money; with interest, paid by relator as purchaser at the tax sale of certain lands in Monroe County, for taxes of 1867, the tax title having been held void for illegality in certain ditch taxes, by the Circuit Court for Monroe County.

Denied July 15, 1874.

1030 SMITH vs. AUDITOR GENERAL, No. 16274½.

To compel respondent to issue a deed to relator of certain land which the State had bid in upon sale for delinquent taxes.

Order to show cause denied April 27, 1897.

Relator had applied by mail enclosing a certain sum which was insufficient to cover tax, costs, interest and charges.

Its receipt was acknowledged and the shortage called to relator's attention. Relator afterwards remitted the amount, but in the meantime another applicant had paid in the full amount and received a deed.

1031 SWEET vs. AUDITOR GENERAL, 3 M., 427.

To compel respondent to convey to relator certain lands sold at tax sale for delinquent taxes for the year 1844.

Denied 1854.

Held, that the Laws of 1843, Sec. 69, p. 81, authorizes the auditor general to withhold a conveyance after a sale in certain cases; that the act conferred upon him judicial power, into the proper exercise of which the court cannot inquire in proceedings of this nature; that mandamus would only be granted to compel the performance of a ministerial act not dependent upon the exercise of judicial discretion, in the absence of an effectual legal remedy; that whether the deed was properly withheld is not a subject of inquiry, and if the party is dissatisfied his remedy is by certiorari.

1032 HAND vs. AUDITOR GENERAL, No. 16173; 4 D. L. N., 136; 71 N. W., 160.

To compel respondent to issue a deed of certain lands, which had been sold for delinquent taxes and bid in by the State, upon application by relator for the purchase of the State bid, accompanied by a tender of the necessary amount.

Denied May 11, 1897, with costs, on the ground that respondent was justified in withholding the deed, under Sec. 98, of Act No. 154, Laws of 1895.

Upon taxation of costs the question of respondent's right to tax the expense of printing briefs came up, was referred to the court and the court allowed the same.

1033 KNEELAND ET AL. vs. AUDITOR GENERAL, No. 16212; 4 D. L. N., 197; 71 N. W., 477.

To compel respondent to issue a deed, where lands assessed as five separate parcels and by as many different descriptions, were advertised and sold for the taxes of 1893, under two descriptions, and the taxes had been paid within the time required by law upon two of the five descriptions, and the parcels upon which the taxes had been paid were included within the descriptions by which the lands were advertised and sold.

Denied May 25, 1897, with costs.

Held, that the respondent was justified in refusing to issue a deed to one who had purchased the State bid, there being no way of determining upon what portion of the land the taxes had been paid.

1034 FITZGERALD vs. AUDITOR GENERAL, No. 12865.

To compel respondent to execute to relator a deed of certain lands sold at a tax sale.

Denied June 29, 1892, with costs.

The sale was made May 4, 1891, and the return showed that,

on April 30, 1892, the delinquent made an application for redemption, and on that date, which was Saturday, mailed to the auditor general from Grand Ledge the necessary money for such redemption, and respondent received the money on Monday morning, and issued a certificate of redemption.

**1035 McINTYRE (Treas. Board of Regents) vs. AUDITOR GENERAL,
19 M., 13.**

To compel respondent to draw his warrant on the proper fund for the one-twentieth of a mill tax, under the Law of 1867, it being claimed by respondent that under the proper construction of the law of 1869, which made an appropriation for the University, the board were not entitled to the proceeds of the tax claimed.

Granted July 7, 1869.

**1036 REGENTS OF THE UNIVERSITY vs. AUDITOR GENERAL,
17 M., 160.**

To compel respondent to issue his warrant for the sum of \$3,000, which had been appropriated by the board to establish a School of Homeopathy at some point other than Ann Arbor.

Denied July 13, 1868, on the ground that the regents had not complied with the conditions of the grant.

1037 WHIPPLE (Admr.) vs. AUDITOR GENERAL, 5 M., 193.

To compel payment of the salary of relator's intestate, as judge of the Supreme Court, he having been elected circuit judge, and under the Act of 1851 acted as judge of the Supreme Court.

Denied May 28, 1858, on the ground that under the Constitution of 1850, the office of judge of the Supreme Court

was not a distinct office from that of circuit judge, but two sets of duties were attached to the office of circuit judge.

1038 SMITH vs. AUDITOR GENERAL, 80 M., 205.

To compel respondent to issue a warrant on the State Treasury for \$100, claimed to be due relator as "war bounty," under Act No. 23, Laws of 1864.

Denied April 18, 1890, on the ground that there was no money in the treasury out of which said money could be lawfully paid, and none provided for that purpose.

1039 LACHANCE (Justice of the Peace) vs. AUDITOR GENERAL, 77 M., 563.

To compel respondent to draw his warrant on the State Treasury to pay relator's claim for holding an inquest on the body of a stranger, and for the expenses of burial, as allowed by the Circuit Court under the statute.

Granted November 8, 1889.

1040 HURSLEY (Sheriff) vs. AUDITOR GENERAL, No. 12139, 90 M., 439.

To compel respondent to pay relator's bill for conveying to the Detroit House of Correction, a prisoner convicted under 3 How. Stat., Sec. 9286, of keeping a house of ill-fame and sentenced under How. Stat., Sec. 9864.

Granted March 4, 1892, with costs.

Held, that the fees or compensation of the sheriff for such services are state charges regardless of whether or not the county in which the conviction is had, has a contract with the said House of Correction, for the reception and retention of such persons.

1041 HOUGHTON COUNTY vs. AUDITOR GENERAL, 41 M., 28.

To compel respondent to issue a warrant for an amount credited to relator on account of sales of lands for delinquent taxes, the lands having been struck off to the State for want of bidders.

Denied June 4, 1879, on the ground that the order for sale was unwarranted, and the state could not be charged with bids upon an unauthorized sale.

1042 ST. MARY'S FALLS SHIP CANAL CO. vs. AUDITOR GENERAL, 7 M., 84.

To compel respondent to remit the taxes upon lands appropriated for the construction of a ship canal upon the Falls of St. Marys.

Granted July 15, 1859.

1043 STATE TREASURER vs. AUDITOR GENERAL, 46 M., 224.

To compel the Auditor General to assess the Michigan Central Railway Company under the general law.

Denied June 15, 1881.

Held, that said company is not a corporation formed under the general law and taxes are properly assessed against it upon the basis of the original special charter.

1044 THROOP vs. AUDITOR GENERAL, 9 M., 134.

To compel the Auditor General to reject the taxes upon certain lands patented to relator in 1859, on the ground that they are military bounty lands, exempt from taxation for a specific term after the date of the patents.

Granted November 14, 1860.

1045 TROMBLEY vs. AUDITOR GENERAL, 23 M., 471.

To compel the issue and delivery of a warrant for the amount awarded as damages upon condemnation of certain lands for the use of the United States.

Denied October 10, 1891.

1046 STEELE vs. AUDITOR GENERAL AND ATTORNEY GENERAL, No. 16007; 3 D. L. N., 751; 69 N. W., 738.

To compel respondents to approve of an official bond executed by relator as principal, and the Fidelity and Deposit Company of Maryland, as surety.

Granted December 28, 1896.

1047 MORELAND vs. ATTORNEY GENERAL, No. 16158.

To compel the Attorney General to file an application for mandamus against the Common Council of the City of Detroit.

Granted March 12, 1897.

See Moreland vs. Com. Coun., 1129.

1048 YATES vs. ATTORNEY GENERAL, 41 M. 728.**1049 COOK vs. ATTORNEY GENERAL, 41 M., 728.**

The Supreme Court will not review the discretion of the Attorney General in refusing to file an information in the nature of a quo warranto against a railway corporation, where it is not clearly abused and where the proceeding could not benefit the relator.

Denied October 22, 1879.

1050 CITY OF DETROIT ET AL. vs. ATTORNEY GENERAL, No. 14520½, 103 M., 612.

To compel respondent to file information in the nature of a quo warranto, to enquire by what right a certain street railway company claims to and does exercise in certain streets in the City of Detroit the franchise of maintaining and using street railway tracks on said streets.

Denied January 22, 1895, with costs to respondent.

A suit had been instituted by relator against said street railway company, to enjoin its operation after a given date, on the ground that an ordinance extending to another company to whose franchises the defendant had succeeded, the right so to operate its railway, was void. This suit was removed to the Federal Court, where a decision was rendered in favor of the defendant therein.

Held, that said decision is res judicata upon this application.

1051 FULLER vs. ATTORNEY GENERAL, No. 13803, 98 M., 96.

To compel respondent to file an information in the nature of a quo warranto, to test the title to the office of warden of the State House of Correction at Ionia.

Granted December 8, 1893.

1052 COON vs. ATTORNEY GENERAL, 42 M., 65.

To compel Attorney General to file an information in the nature of a quo warranto, to enquire into the right of one Harris to hold the office of police justice, in the City of Grand Rapids.

Denied October 29, 1879.

1053 LAMOREAUX vs. ATTORNEY GENERAL, No. 12102, 89 M., 146.

To compel respondent to file an information in the nature

of a quo warranto to determine the right to hold the office of sheriff of Kent county.

Denied December 21, 1891, with costs.

1054 COURTRIGHT vs. ATTORNEY GENERAL, 43 M., 411.

To compel respondent to certify a bill of costs taxed against the State, in an action on a recognizance.

Denied April 23, 1880.

Held, that an action upon a recognizance of bail for the appearance of a person charged with crime is not such a civil action as authorized costs to be taxed against the State under Comp. L., 7407.

1055 WEBSTER vs. COMMISSIONER OF STATE LAND OFFICE, 66 M., 503.

Where nothing remains but the enforcement of a legal duty, the remedy is by mandamus.

Decided June 23, 1887.

1056 ROBERTSON vs. COMMISSIONER STATE LAND OFFICE, 44 M., 274.

To compel respondent to issue a certificate for certain lands where the conditions entitling relator to a certificate of purchase were that he should pay one-fourth down and the rest at any time thereafter, with interest; the refusal to issue a paid up certificate being based upon the ground that the taxes levied in respect to said land from the time of their purchase remained unpaid.

Granted October 6, 1880.

A statute enacted after the original purchase added the condition to such sale that the taxes should also be paid. The court

in granting the writ held that the State did not release any tax lien on the land by giving a deed, and that this would not govern a case where the certificate of purchase had been issued after the passage of the statute.

1057 CHADBOURNE vs. COMMISSIONER OF THE STATE LAND OFFICE, 59 M., 113.

To issue patents for certain lands.

Denied January 20, 1886, on the ground that the lands were not subject to entry.

1058 ESTABROOK vs. COMMISSIONER OF STATE LAND OFFICE, 19 M., 469.

To compel the issue of a patent for certain school lands.

Denied January 5, 1870.

Held, that relator is entitled to the benefit of admissions contained in the return, but he cannot insist upon facts alleged in the petition and accompanying affidavits which are not admitted.

1059 WAIT vs. COMMISSIONER OF THE STATE LAND OFFICE, No. 11665.

To compel respondent to issue a patent for eighty acres of land.

Denied July 28, 1891, with costs.

By Act No. 130, Session Laws 1883, 1,000 acres of swamp lands, not otherwise appropriated, were granted to Livingston County, for improving the Cedar River. Said county contracted with one Sparrow for the work and assigned to Sparrow its claim to said land. Sparrow assigned to relator the right to select and receive eighty acres.

Respondent answered that the eighty acres in question had

been otherwise appropriated; that said land was in 1878 licensed to one Gero as a homestead under Act No. 229, Laws of 1859; that Gero subsequently abandoned said land and the same reverted to the State in 1890; that said land had not since been restored to market, hence was not subject to private entry or purchase.

**1060 MAYS vs. COMMISSIONER OF THE STATE LAND OFFICE,
No. 12103.**

To compel respondents to issue patents for certain lands.
Denied December 23, 1891, with costs.

**1061 McRAE vs. COMMISSIONER OF THE STATE LAND OFFICE,
No. 12284, 89 M., 463.**

To compel the issue of patents for certain lands.
Denied December 23, 1891, with costs.

**1062 HOUGHTON COUNTY vs. COMMISSIONER OF THE STATE
LAND OFFICE, 23 M., 269.**

To compel the issuance of certain patents for lands.
Granted July 11, 1871.

1063 ELY vs. COMMISSIONER OF STATE LAND OFFICE, 49 M., 17.

To compel respondent to issue to relator a certificate of purchase of certain lands.
Denied, with costs, June 27, 1882.

**1064 PARKHURST vs. COMMISSIONER OF THE STATE LAND
OFFICE, 17 M., 338.**

1065 PHILLIPS vs. COMMISSIONER OF THE STATE LAND OFFICE, 17 M., 340.

To compel the issue of a land certificate, in a case where other parties had previously applied but were not ready to pay their money.

Granted October 13, 1868, but without costs, the court being satisfied that the commissioner had acted in good faith.

1066 SPARROW vs. COMMISSIONER OF THE STATE LAND OFFICE, 56 M., 567.

To compel respondent to reserve from sale certain designated swamp lands, appropriated to aid in improving the channel of a certain waterway, under Act No. 30, Laws of 1883.

Granted May 6, 1885.

1067 HEATHER ET AL. vs. COMMISSIONER STATE LAND OFFICE, 17 M., 259.

To compel respondent to issue a certificate of conveyance of certain lands in payment of the contract price for the construction of a certain road.

Denied July 13, 1868.

Held, that relators were not entitled to select lands which were not subject to entry at private sale.

1068 JONES vs. COMMISSIONER OF STATE LAND OFFICE, 21 M., 235.

To compel respondent to issue to relator a certificate of purchase of a city lot in Lansing, which was purchased by him at a sale of the same as forfeited school lands.

Denied, with costs, July 12, 1870.

Respondent insisted that under the law then in force the

purchaser whose rights were forfeited was entitled to a year's redemption and that the certificate of purchase could not issue to relator until the year had expired.

The relator, on the other hand, insisted that the statute which purports to give the right of redemption, for various reasons, is unconstitutional and void.

1069 POTTER vs. COMMISSIONER OF STATE LAND OFFICE, 55 M., 485.

1070 FAIRBANKS vs. COMMISSIONER OF STATE LAND OFFICE, 55 M., 485.

To compel the issuance of land certificates upon application made before the land had been placed on sale.

Denied January 7, 1885.

Costs were denied, as the rights of intervenors cannot be passed upon.

1071 CHAPMAN vs. COMMISSIONER OF THE STATE LAND OFFICE, 26 M., 146.

To require respondent to issue a full paid certificate of purchase for certain parcels of land.

Denied November 7, 1872.

1072 PINCKNEY vs. COMMISSIONER OF THE STATE LAND OFFICE, No. 12365.

To compel respondent to receive certain interest and the amount of the penalty upon a State Building Land certificate, and refrain from selling the land for unpaid taxes.

Denied November 18, 1891, without costs.

Respondent insisted that relator did not pay the interest due March 1, 1891, within the time allowed by law; that her right was thereby forfeited; that thereupon she could not redeem, except upon paying interest, penalty and taxes under How.'s, Sec. 5281, and that he had a legal right to refuse to receive the interest and penalty, or to renew the certificate until the taxes were paid.

1073 SHERWOOD vs. COMMISSIONER OF STATE LAND OFFICE,
No. 16094; 71 N. W., 532; 4 D. L. N., 298.

To compel respondent to issue a deed to relator, as purchaser of a small unsurveyed island.

Granted May 28, 1897, with costs.

Relator contended that the island is situate in Lake Huron, while on the other hand it is claimed that it lies in St. Mary's River and is therefore owned by the proprietor of the adjoining land.

1074 EMPLOYERS' LIABILITY ASSURANCE CO. vs. COMMISSIONER OF INSURANCE, 64 M, 614.

To license a foreign assurance company to do business in this State.

Denied January 27, 1887.

1075 HARTFORD FIRE INSURANCE CO. vs. COMMISSIONER OF INSURANCE, 70 M., 485.

To compel respondent to vacate an order revoking the license of relator, a foreign assurance company, to do business in this State.

Denied June 8, 1888.

**1076 WALKER vs. COMMISSIONER OF INSURANCE, No. 14559,
103 M., 344.**

To compel the reception and filing of the reports of a fraternal beneficiary association under Act No. 119, Laws of 1893, and to issue a certificate of authority to said association to carry on business.

Denied December 22, 1894, with costs.

**1077 NATIONAL LIFE INSURANCE COMPANY OF CHICAGO vs.
COMMISSIONER OF INSURANCE, 25 M., 321.**

To compel respondent to issue to said company a license to transact its business of life insurance in this State.

Denied, with costs, July 10, 1872.

Respondent refused the license on the grounds (1) that the form of contract of insurance used by said company did not distinctly state therein the amount insured or life benefit; (2) that it did not distinctly state therein the period of continuance; (3) that no definite premium was stated therein, and (4) that the payment of the life benefit was, under said form of contract, contingent upon assessments upon surviving members.

Hence, that under the Statute of 1872, the company was prohibited from doing business in said State.

**1078 JOHNSON vs. FARMERS' FIRE INS. CO. AND COMMISSIONER
OF INSURANCE, No. 15093½.**

To compel the insurance company to pay a judgment recovered against it by relator, and to require the insurance commissioner, if judgment be not paid within a time to be stated, to revoke permission to do business within the State.

Order to show cause denied October 1, 1895.

It appeared that certain proceedings were still pending respecting the right to the fund.

1079 PREFERRED MASONIC LIFE INS. CO. vs. COMMISSIONER OF INSURANCE, No. 15919; 4 D. L. N., 82; 70 N. W., 1026.

To compel respondent to approve a form of policy, prepared by relator, organized under Act No. 187, Public Acts of 1887, providing for the incorporation of co-operative and mutual benefit associations.

Denied April 27, 1897, with costs.

Held, that the Act did not authorize the issue of policies providing for payment in case of total disability.

1080 HOME LIFE ASSURANCE CO. vs. COMMISSIONER OF INSURANCE AND ATTORNEY GENERAL, No. 16101; 4 D. L. N., 95; 70 N. W., 1031.

To compel respondent to approve of certain amendments to relator's articles of association, enabling it to issue (1) whole life policies; (2) term policies; (3) advance payment policies, and (4) policies insuring joint lives.

Granted April 27, 1897, without costs.

The Attorney General contended that Act No. 187, of the Public Acts of 1887, as amended by Act No. 58, Laws of 1895, does not authorize the issue of either of the three last named classes.

1081 GIDDINGS vs. QUARTERMASTER GENERAL, 25 M., 339.

Mandamus to compel respondent to issue a certificate of amount due for State bounties.

Denied July 12, 1872, on the ground that it did not appear that the assignment of the claim to relator, or any evidence of it was brought to the notice of respondent or that any request for the certificate was made to him.

1082 HANSELMANN vs. QUARTERMASTER GENERAL, 14 M., 23.

To compel the payment of a bounty under Act of March 6, 1863.

Denied November 11, 1865.

Held, that a member of the Michigan Provost Guard is not entitled to the State bounty under the published order.

1083 NICHOLS vs. QUARTERMASTER GENERAL, 19 M., 383.

To compel payment of a State bounty to the relator.

Granted October 28, 1869.

1084 BLAIR vs. QUARTERMASTER GENERAL, 12 M., 191.

To compel the payment of a bounty offered to volunteers, under the Laws of 1863, p 60.

Granted December 5, 1863.

Held, that a man drafted into the United States service for nine months, but allowed to volunteer and be mustered in for three years, is entitled to the State bounty offered to volunteers.

1085 LOMANE vs. QUARTERMASTER GENERAL, 13 M., 247.

To compel respondent to pay to relator the State bounty, under the 8th section of the Act authorizing the payment to volunteers in the service of the United States, approved February 5, 1864.

Denied May 3, 1865.

Held, that the Act was designed to distinguish between volunteers under the call of 1863 and those enlisted under the call of 1864, and to provide bounty for the latter only.

1086 BLANCHARD vs. QUARTERMASTER GENERAL, 47 M., 644.

To compel respondent to receive a claim for State bounty, provided for by Act No. 27, 1865, and under Sec. 1, of Act No. 32, 1871, to examine and allow the claim.

Denied October 5, 1881.

Held, that the delay in making the application was fatal.

1087 ATTORNEY GENERAL vs. REGENTS OF THE UNIVERSITY, 30 M., 472.

To require respondents to appoint, install and maintain two professors of homeopathy in the department of medicine of the university, as provided by Laws of 1873, p. 73.

Denied October 30, 1874.

1088 DRAKE vs. REGENTS OF THE UNIVERSITY, 4 M., 98.

To compel the board to appoint a professor of homeopathy in the department of medicine.

Denied 1856.

Held, that as a general rule it is not competent for a private citizen, when not directly injured, to invoke the aid of the writ to compel a public board to the performance of an omitted duty.

Again, that the interests of the university are committed to the judgment and discretion of the regents, and it is a sufficient answer to say, that they had commenced and were making the investigation necessary to the appointment.

1089 ATTORNEY GENERAL vs. REGENTS OF THE UNIVERSITY, 18 M., 468.

To compel the appointment of a professor of homeopathy.

Denied May 13, 1869.

The Act of 1855, p. 232, assumed to limit the power of the

regents to regulate the management of the university by enacting the following proviso: Provided, that there shall always be at least one professor of homeopathy in the department of medicine.

The court was equally divided upon the question, whether the Legislature had power under the Constitution to exercise any such authority over the regents.

**1090 STIRLING vs. REGENTS OF THE UNIVERSITY, No. 15561;
3 D. L. N., 371; 68 N. W., 253.**

To compel the board to comply with the provisions of Act No. 257, Laws of 1895, relative to the establishment of a Homeopathic Medical College at Detroit.

Denied July 28, 1896, with costs, on the ground that the Attorney General is the proper party relator in such case and that said Act No. 257 is unconstitutional.

1091 RICH (Governor) vs. WARDEN OF THE STATE PRISON, No. 14669, 104 M., 436.

To compel the transfer of a convict from the State Prison to the House of Correction and Reformatory at Ionia, under Act No. 118, Laws of 1893.

Granted March 19, 1895.

1092 RICH (Governor) vs. WARDEN OF THE STATE PRISON, No. 15268; 65 N. W., 235; 2 D. L. N., 698.

To compel respondent to transfer a female prisoner, whose sentence had been commuted to imprisonment in the Detroit House of Correction, to said institution, under How. Stat., Sec. 9865.

Granted December 10, 1895, without costs.

1093 RUSSELL vs. INSPECTORS AND AGENT OF THE STATE PRISON, 4 M., 186.

To compel respondent to desist from teaching convicts in the State Prison the mechanical trade of wagon making, and from manufacturing wagons in said prison with convict labor.

Denied 1856.

Held, that it is for the agent of the prison to determine the question what trades are within the constitutional provision, and that the court will not interfere by mandamus to control the agent in the exercise of his discretion.

Whether a private individual can apply for a writ in such case, quere.

1094 FLYNN (Treasurer Board of World's Fair Managers) vs. AUDITOR GENERAL, No. 14017½, 99 M., 96.

To compel respondent to draw a warrant on the State Treasury in excess of appropriation, because certain moneys realized from sale of buildings, etc., had been converted into the treasury.

Denied February 12, 1894, without costs.

1095 LOSER ET AL. vs. BOARD OF MANAGERS OF SOLDIERS' HOME ET AL., No. 12886, 92 M., 633.

To compel vacation of a certain rule and order, relating to the pensions of inmates of the Soldiers' Home.

Denied June 28, 1892.

1096 RICH (Governor) vs. BOARD OF STATE CANVASSERS, No. 13973.

To compel respondents to forthwith reconvene and recanvass the votes cast at the last April election, upon the four several

amendments to the Constitution, on the ground that said votes were not correctly canvassed; and the secretary of state, after such recanvass, to publish the result and enter the same of record.

Granted January 18, 1894.

1097 RICH (Governor) vs. BOARD OF STATE CANVASSERS, No. 13996, 100 M., 453

To compel respondent to reconvene and recanvass votes cast upon the question of the adoption of an amendment to the Constitution, relative to the salary of the Attorney General, where after the Board of State Canvassers had canvassed the votes cast for and against the adoption of the amendment, and after the officers composing the board had gone out of office, it is made to appear that a palpable mistake was committed, due in part to the unauthorized rejection of the returns from one county, and in part to a fraudulent and criminal alteration of the returns from another county, thereby changing the result of the vote in the State.

Granted May 22, 1894.

1098 BELKNAP vs. BOARD OF STATE CANVASSERS, No. 13351, 95 M., 155.

To compel respondents to canvass the returns forwarded to said board by the Board of Canvassers of Ionia County, in obedience to the mandate of this court in *Belknap vs. Board of Canvassers (Ionia)*, 94 M., 516, without reference to the resolution rejecting the vote of Lyons Township.

Granted February 14, 1893. Opinion filed March 10, 1893.

Relator was a candidate for Congress in the Fifth Congressional District, at the November election, 1892.

1100 BAKER vs. BOARD OF STATE CANVASSERS, No. 15970; 69 N. W., 656; 3 D. L. N., 683.

To compel respondents to obtain corrected returns, and to make the proper credits to certain candidates for office, where the answer shows that if all the votes were credited, as prayed for, it would not affect the result.

Held, that the writ should not be issued to compel the performance of an idle ceremony.

Denied December 24, 1896.

1101 FORT STREET UNION DEPOT CO. vs. STATE RAILROAD CROSSING BOARD ET AL., 81 M., 248.

To vacate that portion of an order made by the crossing board which attached certain conditions to the right to cross a street and railway tracks, which conditions required relator to join with the Mich. Central R. R. Co., across whose right of way relator desired to pass, in the construction of an overhead crossing for teams and travellers and to defray one-half of the expense thereof.

Denied June 6, 1890.

1101½ PORTMAN vs. STATE BOARD OF FISH COMMISSIONERS, 50 M., 258.

By the Superintendent of Fisheries, who is held to be not an officer within the meaning of the Constitution and Laws of the State, but an employe of the Board, to compel the Board to rescind its action discharging him; expunge from its records the minutes of such action; to treat him as a superintendent; to surrender to him a certain note, and to certify his salary bills.

Denied February 27, 1883.

1102 BURGESS vs. NEALE (Deputy County Clerk), No. 12713½.

To compel respondent to administer to relator the oath, declaring his intention to become a citizen of the United States.

Order to show cause denied April 19, 1892.

Relator resides at Battle Creek. The county seat of the county is Marshall. Respondent resides at Battle Creek, and has an office there. Relator seeks to compel respondent to act at Battle Creek.

1103 STOW ET AL. vs. COMMON COUNCIL (Grand Rapids), 79 M., 595.

To compel action under Act No. 449, Local Acts of 1889, providing for the creation of two new wards in the City of Grand Rapids.

Granted February 20, 1890.

Held, that said Act is constitutional; that the "immediate effect" clause in an act of the Legislature is no part of the bill itself, but is added by the engrossing clerk before the bill is sent to the Governor, and the fact that said clause was affixed by mistake, when both Houses had not ordered the act to take immediate effect, cannot destroy the validity of the enactment, and that the taking away of a portion of the territory of their wards in creating new ones does not oust the aldermen of their offices, if they still reside in the remaining territory.

1104 SMITH vs. MAYOR AND COMMON COUNCIL (Saginaw), 81 M., 123.

To compel respondents to rescind a resolution designating the place for holding the first election under the Act consolidating the Saginaws (Act No. 455, Local Acts of 1889), on the ground of the unconstitutionality of said Act.

Denied June 6, 1890, holding the Act constitutional, and

also, that the writ will not issue at the instance of one who has no special or specific interest in the matter; *Ayers vs. State Auditors*, 42 M., 422 (979); *Drake vs. Regents*, 4 M., 98 (1088); *Russell vs. Inspectors*, 4 M., 186 (1093); *McBride vs. Supervisors*, 38 M., 421 (1576); *Delbridge vs. Green*, 29 M., 121 (1609).

1105 PISTORIOUS vs. JUSTICE OF THE PEACE AND MAYOR (Saginaw).

1106 ALLERTON vs. CONTROLLER AND MAYOR (Saginaw), 81 M., 133.

These cases involve the same question as was raised in No. 1104, viz.: the validity of the Act consolidating the Saginaws.

Held, That on the refusal of the proper officer to file a chattel mortgage, and of the justice of the peace to issue an execution, the mortgagee and judgment creditor have such a special interest as entitles them to apply for the writ to compel such action on the part of said officers.

1107 CAMPAU ET AL. vs. COMMON COUNCIL (Detroit), No. 13138.

To compel the council to vacate a resolution appointing inspectors of election in the various election precincts in the City of Detroit.

Denied November 4, 1892, with costs.

Inspectors had been elected under Act No. 564, Local Acts of 1887, but the Council claiming to act in compliance with Act No. 190, Laws of 1891, redistricted the city, changing nearly all of the districts, and appointed inspectors of election in such districts. Relators conceded the authority to redistrict the wards, but insisted that the authority to fill vacancies remained with the electors.

**1107½ CONELY ET AL. vs. COMMON COUNCIL (Detroit), No. 13138,
93 M., 446.**

To compel respondent to vacate proceedings appointing election inspectors.

Denied November 4, 1892.

The city had been redistricted, and while the Act of 1887 provides that vacancies are to be filled by the electors at the opening of the polls, the court held that no inspectors had ever been elected in the new districts.

**1108 ATTORNEY GENERAL vs. COMMON COUNCIL (Detroit), 78
M., 545; 7 L. R. A., 99.**

To compel respondents to observe and carry out the provisions of Act No. 468, Local Acts of 1889, relative to the registration of voters, etc., entitled "An Act to preserve the purity of elections, and guard against abuses of the elective franchise, in the City of Detroit."

Denied October 11, 1889, on the ground that the Act is unconstitutional.

**1109 KENNEDY ET AL. vs. PINGREE (Mayor) ET AL., No. 13752;
97 M., 188; 21 L. R. A., 662.**

To restrain the registration of women attempting to register under Act No. 138, Laws of 1893.

Writ of prohibition granted October 24, 1893, without costs.

**1110 COFFIN ET AL. vs. BOARD OF ELECTION COMMISSIONERS
(Detroit), No. 13753; 97 M., 188; 21 L. R. A., 662.**

To compel respondent to provide means for enabling women to vote for city officers, under Act No. 138, Laws of 1893.

Denied October 24, 1893, without costs.

**1111 HEDGMAN vs. BOARD OF REGISTRATION OF THE FIRST
WARD OF THE CITY OF DETROIT, 26 M., 51.**

To compel respondents to register relator as a voter.

Denied October 23, 1872.

Relator's parents were persons of African blood, born in Virginia, and held there as slaves. In 1843 they left Virginia and went to Canada, where from that time they resided and where the father still resides. Relator was born in Canada some thirty-five years ago and continued to reside there until he was nearly 20 years of age, when he removed to this State and now resides in the First Ward of Detroit.

Relator contended that by the 14th amendment all persons born in the United States and subject to the jurisdiction thereof, are declared to be citizens, that consequently the parents of relator are such and the laws of Congress which make citizens of the children of citizens born abroad, would apply to the case, and render relator a citizen also.

Held, that the parents were not citizens of the United States prior to the adoption of the 14th amendment, and relator does not come within the terms of that amendment, because he was not born within the United States.

**1112 WARREN vs. BOARD OF REGISTRATION (Detroit), 72 M., 398;
2 L. R. A., 203.**

To compel respondent to register relator as an elector in the ward where he takes his meals, rather than in the ward where he lodges.

Granted October 25, 1888.

1113 DEAN vs. BOARD OF REGISTRATION (Nankin), 15 M., 155.

To compel the Board to register the name of relator as a legal elector upon his showing, in the manner required by law, his right to such registration.

The answer of respondents sets forth that they had always considered relator as a negro; that upon his application he tendered no evidence of his statement, excepting his own oath, and that from their previous knowledge of him, his dusky complexion and curly hair, they still considered him a negro. The answer also admitted, as set forth in the petition, that they refused to receive his oath at the time of his application.

Held, that when a person applies to the board of registration for the purpose of having his name registered as a voter, and offers to be sworn as to his qualifications, it is the duty of the Board to examine such person upon his oath. They have no right to reject him on mere inspection. When the return by respondents denies that the relator was entitled to be registered as a voter, an issue will be directed to determine the fact.

Respondents assented to the issue of the writ, and the same was issued November 9, 1866.

1114 WOOD vs. BOARD OF REGISTRATION (Detroit), 17 M., 427.

To compel respondents to meet as a Board of Registration and examine relator under oath, to hear any testimony as to his right to register as an elector, and to register him, if upon such examination he is found qualified and entitled to register.

Granted October 23, 1868.

The Board had upon a personal inspection simply declined to register the applicant, holding he was not a white man within the meaning of the statutory provision relating to electors.

Respondents ask that an issue be framed, but the court held that no issue could be framed as the petition was for a writ of mandamus to compel respondents to meet as a Board of Registration and perform a duty which, under the statute, was imperative.

1115 BECK ET AL. vs. BOARD OF ELECTION COMMISSIONERS
(Wayne), No. 14447½, 103 M., 192.

To compel respondent to rescind its action in placing the name of a certain candidate, for State Senator, on the official ballot, and to place the name of another thereon.

Denied October 24, 1894. Opinion filed December 18, 1894.

Pending the organization of the convention, six of the delegates, including one Murphy, retired, rented a hall, organized a separate convention and nominated a candidate, the substitution of whose name upon the ticket was demanded. Six remained, organized a convention and nominated the candidate whose name was placed on the official ballot. Prior to the split in the convention, and pending the election of a temporary chairman, an objection was made to counting the vote of one who claimed to hold a proxy. The chairman of the senatorial committee of the district, who called the convention to order, examined the proxy, ruled that the same was regular on its face and that the holder was entitled to vote until such time as the convention determined otherwise. After other ballots had been had, on the question of the selection of a temporary chairman, objection was made to the vote of Murphy, on the ground that the vote at the caucus in the ward, which Murphy claimed to represent, was a tie, and thereupon the matter was determined between the contestants by lot. Finally the Chair announced that as the convention was at a deadlock he should appoint a committee on credentials, which was done. Six delegates, including Murphy, retired and organized a separate convention. After recess the first named convention re-assembled and the committee on credentials reported eleven delegates as entitled to seats and that Murphy was not entitled to sit. Six delegates so reported responded. A temporary chairman and secretary were elected but were afterwards made permanent officers, and the candidate whose name was placed upon the official ballot was nominated.

Held, that the convention first assembling was regularly called; that the determination that Murphy was not entitled to a seat is fully sustained by authority; that in the case of a tie vote there is no election, and in the absence of statutory authority neither election officers or candidate have the power to determine the result by lot; and that the allegation of the petition that the delegate, whose proxy was presented, was absent from the State at the time said caucus at which he was elected was held, and that the proxy was irregular and void, is wholly insufficient upon which to base a finding that the committee on creden-

tials erred in determining that the holder of the proxy was entitled to a seat in the convention.

**1116 SEYMOUR vs. BOARD OF ELECTION COMMISSIONERS
(Manistee County), No. 14487.**

To compel respondents to insert the name of James S. Bodell in the place of that of Charles G. Wing, as candidate for the office of State Senator, in the column headed "Independent Democrat" on the official ballot, on the ground that the name of Charles G. Wing appearing in the ticket furnished by the committee was a clerical error of which the Board was afterwards notified.

Granted November 1, 1894, without costs.

**1117 SHIELDS vs. BOARD OF ELECTION COMMISSIONERS OF
THE CITY OF DETROIT, No. 12325; 88 M., 164; 13 L. R.
A., 760.**

To compel respondents to place upon the official ballot a certain list of candidates.

Granted October 31, 1891, without costs. See No 1125.

**1118 McBRIDE vs. BOARD OF ELECTION COMMISSIONERS
(Eaton), No. 16192.**

**1119 McBRIDE vs. BOARD OF ELECTION COMMISSIONERS
(Calhoun), No. 16199.**

**1120 McBRIDE vs. BOARD OF ELECTION COMMISSIONERS
(Gratiot), No. 16200.**

1121 McBRIDE vs. BOARD OF ELECTION COMMISSIONERS
(Ionia), No. 16201.

1122 McBRIDE vs. BOARD OF ELECTION COMMISSIONERS
(St. JOSEPH), No. 16202.

To compel respondents to place the names of the People's Party candidates for Associate Justice of the Supreme Court and Regent of the University, at the approaching spring election, upon the official ballot.

Granted, without costs, April 1, 1897.

The People's Party Convention met and resolved to unite with the Democratic and Union Silver Parties in the nomination of candidates and did so unite. Twenty-eight delegates to the People's Party convention opposed the union, met, selected a chairman and nominated a ticket. The petitions were entertained by the Supreme Court because of the fact that the election occurs within a few days.

1123 CHATTEAU vs. JACOB ET AL. (Board of Election Commissioners of the City of Detroit), No. 12325½.

To place upon official ballot relator's name as a candidate for alderman, he having been selected as such candidate by a committee appointed by a committee of citizens.

Order to show cause denied October 30, 1891.

1124 TODD vs. BOARD OF ELECTION COMMISSIONERS (3rd Cong. District), No. 14782; 104 M., 474-480; 2 D. L. N., 529.

To compel respondent to place relator's name upon the election tickets of three different parties as a candidate for representative in Congress, respondents claiming that such action was prohibited by Act No. 17, Laws of 1895, approved March 14, 1895.

Granted March 25, 1895, without costs, on the ground that while the Act is a valid exercise of power, it does not have a retrospective effect so as to deprive the candidate of the right, when the time for making his election had expired before the law became operative.

1125 CHERRY ET AL. vs. BOARD OF ELECTION COMMISSIONERS (Shiawassee), No. 13125.

To compel respondents to print upon the official ballot upon the People's party ticket, the name of Henry M. Youmans as candidate for Congress.

Denied November 1, 1892, with costs.

It appeared that the congressional convention was divided into two sections, each of which made a nomination, and the election commissioners decided to print two People's Party tickets, the one containing the name of the nominee of one convention and the other the name of the nominee of the other convention. See No. 1117.

1126 BAKER vs. BOARD OF ELECTION COMMISSIONERS (Wayne), No. 15863; 3 D. L. N., 515; 68 N. W., 752.

1127 RUSSELL vs. BOARD OF ELECTION COMMISSIONERS (Wayne), No. 15864; 3 D. L. N., 515; 68 N. W., 752.

To compel respondents to print the ticket certified by relator in the second column or space upon the official ballot.

First named application denied and second granted October 20, 1896.

1128 SHELBY ET AL. vs. BOARD OF ELECTION COMMISSIONERS (Wayne), No. 15863½.

To require respondent to strike from the official ballot the ticket of the Democratic People's Union Silver Party.

Denied October 15, 1896.

1129 MORELAND vs. COMMON COUNCIL (Detroit), No. 16132; 3 D. L. N., 889. Certiorari to Wayne.

To compel respondents to declare the office of Mayor of the City of Detroit vacant, by reason of the election of Hon. Hazen S. Pingree, formerly Mayor of said city, to the office of Governor of the State, and to call a special election to fill the vacancy.

Granted March 19, 1897.

Held, that the office of Mayor is a State office within the meaning of Sec. 15 of Art. 5 of the Constitution; that the offices of Mayor of a municipality and Governor of a State are incompatible under the common law rule, and the acceptance by a public officer of an incompatible office creates an immediate vacancy in the first office.

The relator applied to the Circuit Court for the County of Wayne, but that court held that a private citizen showing no special interest in the subject matter and no injury to himself over that which pertains to other citizens, has no right to invoke the aid of the court in an application for a mandamus to redress a public wrong, if such wrong in fact exists.

After the allowance of the writ of certiorari, relator filed in the Supreme Court a petition setting forth that relator had, pending the consideration of the matter in the Circuit Court, applied to the Attorney General to file a petition to the same end, but that officer replied that he did not desire to determine his action on said application until after the Circuit Court had decided the case then pending before it; that after the decision of the Wayne Circuit Court relator again applied to the Attorney General to make such application; that the Attorney General replied that he desired to give said Hazen S. Pingree a hearing, and fixed the date for said hearing; that after the hearing the Attorney General announced that he would not determine the matter until the Supreme Court had decided the case, which had been removed thereto by certiorari.

Petitioner prayed for a writ of mandamus to compel the Attorney General to comply with relator's request.

The Supreme Court, on March 12, 1897, granted a peremptory order as prayed for and the case proceeded as though instituted by the Attorney General.

1130 ATTORNEY GENERAL vs. BOARD OF COUNTY CANVASSERS (Iron), 64 M., 607.

To compel respondents to meet and canvass the votes cast for the establishment of a county seat.

Granted January 27, 1887.

The Board adjourned without canvassing the votes, claiming that no legal election was held. The answer alleges that the Board having met and adjourned, had gone out of office, and had no further function; that the proceeding is a political one, not involving judicial questions, and that the court has no jurisdiction in the premises, and that no valid election was held.

1131 COMSTOCK vs. SUPERIOR COURT JUDGE (Grand Rapids), 39 M., 195.

To compel respondent to admit relator to the office of clerk of the Superior Court of Grand Rapids, by receiving his bond and oath of office, which is resisted on the ground that by the old law the clerk of Kent County was made ex-officio clerk of that court, and that the new law providing for a separate clerk is invalid.

Granted June 21, 1878.

1132 GEORGE vs. ELECTION INSPECTORS (Hematite Twp.).

To compel the issuing of a certificate of relator's election as supervisor.

Order to show cause denied April 24, 1894, on the ground that the application should be made to the circuit judge.

1133 ROGERS vs. BOARD OF CANVASSERS (Kent), 11 M., 111.

To compel the Board of Canvassers of Kent County to

certify to the election of the relator as Circuit Court Commissioner, at the annual election held in October, 1862.

Denied January 13, 1863, with costs.

The notice of election given by the sheriff was for the election of two commissioners, but it was afterwards changed to one, and the general understanding was that only one was to be chosen. Relator and another were respectively nominated and voted for by opposing parties. Relator's opponent received a majority of the votes cast and was declared elected.

Held, that while the statute requires two commissioners to be elected there had been a failure to hold an election for more than one.

1134 POWELL vs. COMMON COUNCIL (Jackson), 51 M., 129.

To compel the Council to canvass the result of the votes cast for the various candidates for City Attorney, and declare the result.

Granted June 22, 1883.

The City Charter was amended March 28, 1883, and made the City Attorney elective, whereas it had been an appointive office. The election occurred April 2, 1883, and the notice of the election did not contain the office of City Attorney, because the time between the passage of the Act and the election was insufficient.

Held, that the Act dispensed with the necessity of notice.

1135 MAYNARD vs. BOARD OF CANVASSERS (First Rep. Dist. of Kent County) and HARVEY (Clerk), No. 11629; 84 M., 228; 11 L. R. A., 332.

To compel respondents to declare and certify relator's election as representative to the State Legislature.

Denied December 24, 1890.

The case involved the validity of Act No. 254, Laws of 1889,

which provides for cumulative voting in districts entitled to more than one representative.

1136 WESTON vs. PROBATE JUDGE (Kent), 69 M., 600.

To compel respondent to dismiss certain proceedings pending before him, under Act No. 293, Laws of 1887, for a re-count of the votes cast for Mayor of Grand Rapids.

Granted April 25, 1888.

Held, that the Act does not apply to a city, whose Common Council is charged with canvassing the votes, and given the exclusive right to determine the election and qualification of the officer whose election is sought to be contested.

1137 ANDREWS vs. PROBATE JUDGE (Otsego), 74 M., 278.

To compel respondent to continue certain proceedings pending before him, under Act. No. 293, Laws of 1887, for a re-count of the votes cast for prosecuting attorney of Otsego County.

Denied February 6, 1889, on the ground that the Act, while not in conflict with the constitution, is too defective to be carried into execution unless by common consent.

1138 NEWTON vs. BOARD OF CANVASSERS (Wayne), No. 13195½, 94 M., 455.

To compel respondent to grant relator a re-count of the ballots cast for associate justice of the Supreme Court.

Order to show cause denied December 24, 1892.

Held, that the application to the Board of County Canvassers for the re-count, under Act. No. 208, Laws of 1887, was not made in time.

1139 VANCE vs. BOARD OF CANVASSERS (St. Clair), No. 13462, 95 M., 462.

To compel respondent to canvass the election returns for the office of circuit judge, as filed in the office of the county clerk, the board having assumed to re-count the votes, under Act. No. 208, Laws of 1887.

Granted April 28, 1893, on the ground that the Act does not apply to the office of circuit judge.

1140 REILLY vs. BOARD OF CANVASSERS (Wayne), No. 13476½.

To compel the board to re-convene and re-count votes cast for circuit judge.

Order to show cause denied April 28, 1893.

1141 GAGE vs. BOARD OF CANVASSERS (Saginaw), No. 13493½.

To compel the board to re-convene and re-count the votes cast for circuit judge.

Order to show cause denied April 28, 1893.

1142 BELKNAP vs. BOARD OF CANVASSERS (Ionia), No. 13196.

To compel the counting of certain ballots for relator, that were rejected by respondents.

Denied December 3, 1892.

Relator was a candidate for Congress, and by the Constitution of the United States, the House of Representatives is made the judge of the election returns and qualifications of its members.

**1143 BELKNAP vs. BOARD OF CANVASSERS (Ionia), No. 13242,
94 M., 516.**

To compel respondent to re-convene and canvass the votes cast for the office of representative in Congress according to the original returns, respondent having assumed, upon the application of relator's opponent, to re-count the ballots under the provisions of Act No. 208, Laws of 1887.

Granted February 3, 1893, without costs.

1144 HOWARD vs. BOARD OF CANVASSERS (St. Clair), No. 11956.

To compel respondents to re-assemble and re-canvass the vote of the county, and in such canvass to count and consider the returns made by the inspectors of election in the second and fourth wards, of the City of Port Huron, of the votes cast for relator and his opponents, as candidates for the office of regent of the University and for the candidates for the office of associate justice of the Supreme Court, the said returns having been rejected by respondents because they bear date April 7, whereas the election was held April 6.

Granted in the alternative April 23, 1891.

1145 DRENNAN vs. BOARD OF CANVASSERS (Wyandotte), No. 14883, 106 M., 117. Certiorari to Wayne.

To compel the common council, as a board of canvassers, to re-convene and re-count the votes cast for supervisor of the second ward.

The circuit judge denied the writ. Affirmed July 2, 1895, with costs.

Relator and one Meggs were candidates for the office. The canvassers met April 4 and adjourned to April 5. On the face of the returns Meggs received a majority of the votes cast. Without canvassing the vote the board adjourned to April 15.

In the meantime Meggs obtained from the Wayne Circuit Court a mandamus requiring the board to meet, canvass the returns and issue a certificate of election to Meggs. On April 15, the board met and complied with the writ. Relator on that day filed his petition for a re-count.

Respondent contended that the petition for a re-count was filed too late; that the statute contemplates that the vote shall be canvassed on the Thursday next succeeding the election, which was held on Monday, April 1; that the adjournment to the 15th was illegal, and upon this ground the circuit judge issued the writ applied for by Meggs.

1146 JOHNSON vs. BOARD OF CANVASSERS (Casnovia), No. 14174, 101 M., 187. (Certiorari to Kent.)

To compel a re-count of the votes cast at a village election and to declare the result. The circuit judge granted the writ.

Reversed June 16, 1894, with costs.

Held, that Act. No. 208, Laws of 1887, does not cover village elections.

1147 McKENZIE vs. BOARD OF CITY CANVASSERS (Port Huron), 70 M., 147.

To compel respondent to re-count the votes cast for and against relator for alderman, in a city whose charter did not make the Board of City Canvassers or the Common Council of the city, judges of the election or qualifications of aldermen.

Granted May 3, 1888.

1148 COLL vs. BOARD OF CANVASSERS ET AL. (Detroit).

1149 SCHEHR vs. BOARD OF CITY CANVASSERS ET AL. (Detroit).

1150 MEIER vs. BOARD OF CITY CANVASSERS (Detroit), 83 M., 367.

To compel respondent board to declare relators elected to the office of aldermen of their respective wards.

Granted November 19, 1890, and opinion filed November 21, 1890.

Held, that the duty of the city board is purely clerical—to foot up the returns of the board of inspectors and to declare the result and issue certificates accordingly—and the performance of this duty will be compelled by mandamus.

1151 HILTON vs. COMMON COUNCIL (Grand Rapids), No. 16250; 4 D. L. N., 83; 70 N. W., 1043. (Certiorari to Kent.)

To compel respondents, sitting as a board of canvassers, to canvass the original returns of votes cast for relator for the office of alderman, and to issue a certificate, based upon such returns, in a case where a re-count was in progress, the board assuming to act under Act No. 208, Laws of 1887, and the re-count had proceeded in some of the precincts upon the application of relator.

The circuit judge granted the mandamus. Affirmed April 30, 1897, without costs.

Held, (1) that it was not error to allow the writ on the ground that relator had not asked the common council to canvass the original returns, it appearing that it would have been impractical to make such request at the time the necessity arose for applying for the writ.

(2) The fact that the relator had himself petitioned for a re-count in some of the precincts, would not estop him from questioning the regularity of the work of the committee.

(3) Act. 208 of the Laws of 1887 does not apply to a contest over an election to an office as a member of a body which, by law, is made the judge of the qualifications of its own members.

Sec. 20 of Title 2 of the Charter of the City of Grand

Rapids, cannot be construed as conferring upon the present council the authority not only to canvass the returns, but also to determine what persons are elected to the several offices respectively; the authority to determine the election of the members of the new body must be held to rest in the new council.

1152 ROEMER vs BOARD OF CANVASSERS (Detroit), No. 12379, 90 M., 27.

To compel respondents to re-convene and canvass the votes cast for alderman according to the returns originally made by the inspectors, it appearing that the Board of Canvassers had received and acted upon an alleged corrected return, purporting to have been made and signed some days after the first return had been filed with the city clerk.

Granted January 6, 1892.

1153 McQUADE vs. BOARD OF INSPECTORS OF ELECTION (Ecorse), No. 12717, 91 M., 438.

SANSOUCI ET AL. vs. BOARD OF INSPECTORS OF ELECTION (Ecorse), No. 12717½.

To compel board to canvass election returns.

Granted April 20, 1892, without costs.

Held, that the Canvassing Boards are bound by the returns.

1154 NAUMANN vs. BOARD OF CITY CANVASSERS (Detroit), 73 M., 252.

**1155 ADDISON vs. BOARD OF CITY CANVASSERS (Detroit),
73 M., 252.**

To compel investigation by respondents of certain returns of the election of aldermen in the City of Detroit.

Denied January 11, 1889.

Ruled by *Weston vs. Probate Judge*, 69 M., 600, [1136], where it was held, that Act. No. 293, Laws of 1887, does not apply in those cases where the city council, by whatever name it is called, is made the absolute judge of the election and right to office of its members.

1156 RUPP vs. BOARD OF CANVASSERS (Bessemer), No. 12739½.

To compel a recount of votes cast for alderman.

Order to show cause denied April 20, 1892.

**1157 COFFRON vs. BOARD OF CANVASSERS (Montmorency),
No. 14544.**

To compel a re-count of the votes cast for sheriff, under Act No. 208, Laws of 1887.

Denied December 19, 1894.

Two answers were filed, one by the majority of the members of the board, and the other by the minority. The majority returned that relator had withdrawn his petition for a re-count, and it was held that such return must be treated as the true return in the absence of a demand for the framing of an issue.

1158 SHERBURNE vs. BOARD OF COUNTY CANVASSERS (Presque Isle), 45 M., 160.

To compel respondent to canvass certain votes which they had rejected, and to issue a certificate to relator of relator's

election as sheriff, where a certificate had already been issued to another.

Denied January 7, 1881.

Held, not advisable to resort to mandamus unless substantial, if not final, relief can be given.

1159 LINDSTROM vs. BOARD OF CANVASSERS (Manistee Co.), No. 13194; 94 M., 467; 19 L. R. A., 171.

To compel a re-count of votes cast for the office of county treasurer.

Denied December 24, 1892, with costs.

Held, that but one vignette is to be printed on ballots to be used at the general election, under the Election Law of 1891, but that an elector cannot be disfranchised by the action of the board in printing a separate vignette at the head of the county ticket, or by failure to have a proof copy of the ballot on file at least ten days prior to the election.

1160 WHEELER vs. BOARD OF COUNTY CANVASSERS (Manistee Co.), No. 13182, 94 M., 448.

To compel a re-count of votes cast in certain precincts of Manistee County for the office of State senator.

Denied December 24, 1892, with costs.

Held, that Act No. 208, Laws of 1887, 3 How. Stat., Sec. 234 a, does not apply to the office of senator. *Naumann vs. Board of State Canvassers*, 73 M., 252 (1154).

1161 MAY vs. BOARD OF CANVASSERS (Wayne), No. 13241, 94 M., 505.

To compel respondent to re-convene and direct the issuance to him of a certificate of election as county clerk.

Granted February 3, 1893, without costs.

1162 HENDERSON vs. BOARD OF CANVASSERS (Manistee Co.),
No. 13195, 94 M., 452.

To compel respondent to re-convene, and the committee on re-count thereof to report ballots, the reception and rejection of which is complained of.

Denied December 24, 1892, with costs. See 1159, 1163.

1163 PACKARD vs. BOARD OF CANVASSERS (Menominee), No.
13200, 94 M., 450.

To compel respondents to re-assemble and make a full and detailed report of all ballots claimed to have been improperly counted for relator's opponent, and all those in his favor rejected by said board, and for an order to count certain ballots and to reject others.

Denied December 24, 1892, with costs.

Held, that the statute cannot be construed as calling for a statement respecting every contested ballot.

And further, that should the board refuse to re-count, mandamus would issue to set the board in motion, but when they have re-counted and made their return and disbanded, they then become functus officio, and the remedy of the aggrieved party is by quo warranto.

1164 BETTS vs. BOARD OF SUPERVISORS (Benzie), No. 14936½.

To require the board to re-convene as a board of canvassers on the question of the removal of the county seat, to consider the matters alleged in a protest which was filed before the determination, and to hear proofs.

Order to show cause denied June 4, 1895, on the ground that the application should be made to the Circuit Court.

1165 DOUBLE vs. BOARD OF SUPERVISORS (Montmorency), No. 13498, 96 M., 39.

To compel the board to re-convene and canvass the votes cast upon the question of the removal of the county seat, and determine the result.

The order applied for was denied, and an order was granted, on the counter prayer of respondent, requiring the inspectors of election of certain townships, who are charged in the answer with fraudulently omitting to make true and correct returns, to show cause why they should not be compelled to make such returns.

Decided June 30, 1893.

1166 PINKERTON vs. BOARD OF CANVASSERS (Montmorency), No. 14163, 101 M., 273.

To compel respondent to convene as a board of canvassers, and canvass all the votes cast at a certain election held in said county, upon the question of the removal of the county seat, their prior determination, that said proposition had not been carried, being based upon the rejection of the vote of a certain township.

Denied June 26, 1894, with costs.

Held, that the action of the board, under How. Stat., Sec. 491, is conclusive, and no judicial review thereof is provided by law.

1167 DARLING vs. MAYOR AND COMMON COUNCIL (Lansing), No. 13494.

To compel respondent to proceed, in a case of a tie vote for alderman, to the drawing of lots by the candidates, under Sec. 9, of the Charter of said city.

Granted in the alternative April 26, 1893.

The council proceeded as directed and relator was chosen and took the oath and his seat in the council.

In June following, relator's opponent filed a petition contesting relator's seat, and asking the council for a re-count. The Common Council entertained said petition, and appointed a committee to re-count the vote, whereupon relator again asked the Supreme Court for a mandamus requiring the Common Council to abstain and desist from further action upon said petition; to vacate and set aside this direction to its committee, and to permit relator to retain his seat in the council. Relator concedes that the council is the judge of the election and qualifications of its members, but that the determination made under the mandate of this court is conclusive.

Upon this last application the order to show cause was denied, June 6, 1893, and the order of April 28, was amended.

1168 CATHCART vs. STARKE (County Clerk), No. 13177½.

To compel re-payment of moneys deposited for a re-count of votes.

Order to show cause denied November 30, 1892.

Held, that under the statute (3 How., 234 a) it is necessary in order to entitle the depositor to return of the deposit, that fraud or mistake be proven, and the depositor receive a certificate of election.

1169 BARNES vs. BOARD OF SUPERVISORS (Van Buren), No. 15411½. (For certiorari to Van Buren.)

To compel respondent to order an election upon the question of the repeal of a resolution, prohibiting the sale of intoxicating liquors in the County of Van Buren.

Petition for writ denied February 26, 1896.

The board had determined that a sufficient number of electors had not joined in the petition; that certain petitioners were not

electors and that certain of the petitions were not posted as required by law.

1170 KEEFER ET AL. vs. BOARD OF SUPERVISORS (Hillsdale),
No. 15555; 2 D. L. N., 253; 67 N. W., 981. (Certiorari to Hillsdale.)

To compel respondent board to re-submit the question of the prohibition of the sale of intoxicating liquors, within the County of Hillsdale, to the electors thereof.

The circuit judge denied the writ. Reversed and writ granted June 30, 1896, without costs.

The board declined to order an election on the ground that inasmuch as the election at which the question was last submitted was held May 14, 1894, and the present petition was filed March 23, 1896, the two years required by the statute before re-submission had not elapsed.

The Supreme Court held, however, that the action by the voters in preparing petitions and presenting them to the board, or the order of the board calling an election need not be deferred until the lapse of two years.

1171 HARSHAW (Mayor) vs. McDONALD (Recorder, Alpena), No.
14091. (Certiorari to Alpena.)

To compel respondent to give notice of a city election, as directed by the Common Council, in accordance with the provisions of the Charter of said city, as it existed prior to the amendment of 1893.

The circuit judge denied the writ. Affirmed March 16, 1894, without costs.

The Charter was amended by the Legislature in 1893, but relator insists that the amendment is invalid; that it has not been accepted by the city; that said city is composed of six wards, each of which is entitled to two aldermen, which alder-

men, with the mayor and recorder, constitute the Common Council.

The validity of the amendment is attacked:

Because (1) it divides the third and fourth wards so as to place 3,360 inhabitants, 750 of whom are electors, in the third ward, and but 1,100 inhabitants, of whom 230 are electors, in the fourth ward; (2) it provides for but one alderman for the third ward for the year 1895; (3) it does not provide for the election of aldermen in any of the wards except the fourth in 1894; and (4) it does not define the ward boundaries.

1172 ROBINSON vs. BOARD OF SUPERVISORS (Cheboygan),
49 M., 321.

To compel respondent to admit relator to a seat as a supervisor, he having received the statutory certificate of election.
Granted October 18, 1882.

1173 TINKER vs. BOARD OF PUBLIC WORKS (Jackson), No.
13548, 97 M., 616.

To compel respondent to recognize relator as a member of said board, and to allow him to participate in its proceedings.

Denied June 8, 1893, with costs, on the ground that the petition fails to show his appointment by a vote of the majority of the council, exclusive of his own vote.

1175 HOLDEN (Pres. Reed City) vs. BOARD OF SUPERVISORS
(Osceola), 77 M., 202.

To compel respondents to allow relator to sit with them as a member of the Board of Supervisors.

Granted October 25, 1889.

Held, that the Act re-incorporating the village of Reed City and making the president of said village, ex-officio, a member of the Board of Supervisors of the county, is constitutional.

1176 OSTRANDER ET AL. vs. BOARD OF SUPERVISORS (Gratiot),
No. 15854; 69 N. W., 91; 3 D. L. N., 570. (Certiorari to
Gratiot.)

To compel respondent to recognize relators as supervisors,
having been elected as such by the city of St. Louis.

Affirmed and writ granted December 4, 1896, with costs.

1177 SMITH (Mayor, Eaton Rapids) vs. BOARD OF SUPERVISORS
(Eaton), 56 M., 217.

To compel the board to recognize relator's right to sit and
act as a member of said board.

Granted January 28, 1885.

The charter of the City of Eaton Rapids provides that the
supervisor of the city shall, together with the mayor, represent
the city in the County Board of Supervisors, and shall be
entitled to the same rights, privileges and powers as any other
member.

1178 LAWRENCE vs. LETIKER ET AL., No. 11913½.

To compel respondents to recognize relator as a member and
chairman of the Board of Wayne County Auditors.

Order to show cause denied April 22, 1891.

Relator was appointed by the governor to fill vacancy. The
Board of Supervisors afterwards called a special election to
fill said vacancy, and one Trombly was elected. The board
recognized said Trombly, and acted with him and refused to act
with or recognize relator.

1179 BAKER vs. BOARD OF POLICE COMMISSIONERS (Port
Huron), 62 M., 327.

To compel the commissioners to receive and acknowledge
relator as a member of the commission, where the charter pro-

vides that all officers appointed by the council shall be appointed by a majority of the members-elect, and at a meeting of the council attended by eleven out of twelve members of that body, acting upon the nomination made by the mayor, six of those present voted for relator's appointment and five against it.

Denied July 1, 1886.

Held, that the charter provision applied to members of the police board.

1180 HUNTLEY vs. FINLEY ET AL., No. 13476.

To compel William Finley, late supervisor, and William J. Terney, county treasurer (Roscommon), to deliver to relator the books, blanks, assessment rolls and papers pertaining to the office of supervisor.

Granted, without costs, April 26, 1893.

Finley, the then supervisor, and relator were candidates for the office of supervisor, at the spring election, held April 3, 1893, and it is conceded that relator received a majority of the votes cast, and was declared elected.

The petition avers, a regular nomination at the party caucus and notice by proper certificate signed by the chairman and secretary of the caucus, filed with the township clerk more than ten days previous to the day of election. The answer denies this allegation "upon information and belief." It is conceded that a printed ballot was used at the election and both candidates were voted for upon said ballot; but the answer claims that no official ballot was used, but does not state why the ballot was not an official ballot.

1181 MEAD vs. COUNTY TREASURER (Ingham), 36 M., 415.

To compel respondent to pay an order drawn by persons claiming to be superintendents of the poor.

Denied April 24, 1877.

Relator, Hayner, and Huntington were the county superintendents of the poor. The Board of Supervisors undertook to remove H. and H. and to appoint C. and W. in their stead, and ordered respondent to pay all orders signed by a majority of the superintendents as thus constituted.

Held, that the supervisors had no general authority to remove from office at their discretion "superintendents of the poor"; that such general authority to remove will not be implied as a consequence of the power to appoint; that on an application to require the county treasurer to pay an order drawn by persons claiming to be superintendents of the poor, the legal title of the officers will not be tried, but it appearing upon the record that their appointment was unauthorized, mandamus will not be granted unless it appears that notwithstanding the want of title, they have actual possession and are generally represented to be such officers, and are hence officers de facto; that immediate recognition by the supervisors of the appointment as one to be respected, cannot be regarded as of any importance, nor can recognition of the new appointees by relator tend to show that they were officers de facto, he having been a party to the controversy out of which resulted the attempted removal. In mandamus cases, where the matter is heard on petition and answer, the answer is to be taken as true, and the statement therein that the superintendents sought to be illegally removed, have retained the files and records of their office, have constantly denied the right to make the removal and have continued to act as officers, is conclusive against the claim of the new appointees that they have acted as such officers with general acquiescence in their right.

1182 BROOKS vs. HYDORN (Justice of the Peace), 76 M., 273.

To compel respondent to deliver the files records and dockets belonging to his office, as a justice of the peace of the City of Grand Rapids, to another justice, as provided by Act No. 200, Laws of 1889.

Denied July 11, 1889.

Held, that the act referred to, which assumes to reduce the number of justices in said city to two and to legislate two of such officers out of office, is unconstitutional, the title failing to indicate any such object.

1183 HULBERT vs. HENRY (Justice of the Peace), No. 14878, 105 M., 211.

To compel respondent, a justice of the peace, to deliver over to his successor-elect the books and papers relating to the office.

Denied April 30, 1895, without costs.

The Charter of the City of Battle Creek provides, that the annual election shall be held on the first Monday in April in each year; that there shall be elected annually one justice of the peace, who shall hold office for four years, and until his successor shall be elected and qualify; that all justices of the peace shall qualify within five days after receiving notice of their election, and the sole question raised was whether the justice-elect takes office immediately upon qualifying or whether the incumbent's term ends July 4, under the general law.

1184 GRONDIN ET AL. vs. LOGAN (Supervisor) AND MALLIN (Township Clerk, of Seney), No. 12299, 88 M., 247.

To compel respondents to recognize relators as justices of the peace, and part of the township board.

Denied November 11, 1891, without costs.

Respondents insisted that relators were not regularly elected and duly qualified justices of the peace.

Held, that an answer denying allegations of fact made in the petition is decisive on a hearing on petition and answer.

Also, that the township board cannot in this proceeding question the election or qualification of justices, who have acted as such for more than a year.

1185 FREY vs. MITCHIE ET AL. (Superintendents of the Poor, Wayne), 68 M., 323.

To compel respondents to seat relator as a member of the board.

Denied January 26, 1888.

Held, not the proper remedy to try title to office.

1186 DINGWALL vs. COMMON COUNCIL (Detroit), 82 M., 568. (Two cases.)

To compel respondents to expunge from the record of their proceedings a resolution declaring relator's seat as alderman in the council vacant, and to compel the council to designate the chairman of the several boards of election inspectors and of registration.

Granted in part October 29, 1890.

The answer admitted the illegality of the action of the council in declaring relator's seat vacant, but a mandate was issued requiring the council to meet at a specified time and designate the person to act as chairman for each of the different boards of election inspectors, at which meeting relator should be recognized as an alderman.

Held, that the assignment of aldermen and appointment of other persons as chairmen of the boards of inspectors and registration, in their respective districts, by less than a quorum of the council was invalid, but that the acts of the persons so designated and appointed, sitting as members of the other boards of registration must be held valid; that the appointees were de facto officers as far as they have acted, but that they cannot take any further action under such appointment.

1187 ALTER vs. SIMPSON OR THE COMMON COUNCIL OF DETROIT, 46 M., 138.

Motion for mandamus, quo warranto or certiorari, to deter-

mine relator's right to a seat in the Common Council claimed by respondent Simpson, whose claim is supported by the council.
Denied April 27, 1881.

**1188 COOLEY vs. MAYOR AND CLERK OF PORT HURON,
41 M., 2.**

To compel respondents to re-instate relator as alderman, he having been excluded by the action of the Common Council declaring his opponent elected.

Denied June 3, 1879.

Held, that the charter made the Common Council final judges as to the election of its members, and that mandamus would not lie to compel them to reinstate one whom they had excluded without a proper hearing upon the merits.

1189 DORAN vs. DE LONG ET AL., 48 M., 552.

To vacate a resolution whereby relator's seat in the Common Council had been declared vacant.

Granted June 21, 1882.

Respondents insist, that relator lacked legal capacity to take the office, and that he had subsequently disqualified himself by removing from the ward. The charter makes the council judges of the election and qualification of its members.

Held, that this power expires with the council that admits the member; that the question, whether he had disqualified himself can be tried only by a judicial tribunal, and that mandamus proceedings in such a case have no concern with the legality of his title.

1190 SCHOOL DISTRICT (Algoma) ET AL. vs. BENNETT (Township Treasurer), No. 11735.

To compel the township treasurer of Algoma Township to

pay an order drawn by the director and moderator in favor of the assessor of School District No. 8.

Peremptory writ granted February 4, 1891, without costs.

The treasurer insisted that, by reason of the failure to file their several acceptances, vacancies had occurred which had been filled by appointment made by the school inspectors of the township.

In October, 1889, Norman was elected director to fill vacancy expiring in September, 1891. Coleman was elected moderator in 1889 for three years, and Whitehall was, at the annual meeting held in September, 1890, elected assessor for the term of three years. All had entered upon the discharge of the duties of their several offices, and had continued to be recognized and regarded as the officers of said school district, by all parties, until the alleged appointment of successors to fill alleged vacancies in November, 1890. The old officers, however, refused to recognize said appointees, or to deliver up to them the books, papers or records belonging to said school district, or pertaining to said office.

The court held, that relators were incumbents of their several offices, and that title to office could not be tried in this proceeding.

1191 SCHOOL DISTRICT NO. 8 (Tallmadge) vs. ROOT (Township Treasurer), 61 M., 373.

To compel payment over to the assessor of certain moneys upon warrants signed by one Dowris as moderator.

Granted May 6, 1886.

Payment was refused upon the ground that Dowris was not the moderator.

Held, that the right to an office will not be settled in a mandamus proceeding, but that Dowris was at least an officer *de facto*.

1192 GOODWIN vs. BOARD OF EDUCATION (Grand Rapids), 38 M., 95.

To compel the Board of Education to admit the relator to a seat in that body, to which he claims to have been elected.

Granted January 10, 1878.

1193 CLARK vs. BOARD OF EDUCATION (Detroit), No. 16213; 4 D. L. N., 141; 71 N. W., 177. (Certiorari to Wayne.)

To compel the recognition of relator as a member of the respondent board, in a case where relator had sent his resignation to the mayor, who declined to accept it.

The circuit judge granted the writ. Affirmed May 11, 1897, without costs.

1194 TIBBALS vs. BOARD OF EDUCATION (Port Huron), 39 M., 635.

To require the respondent board to re-admit relator to his seat and to recognize him as a member of that board, the Common Council of the city having adopted a resolution removing relator and several others from their positions as school inspectors.

Granted October 29, 1878.

Held, that the power given to the Common Council to remove officers does not reach any but city officers, and that school inspectors are not city officers.

1195 PARISEAU vs. BOARD OF EDUCATION (Escanaba), No. 13552, 96 M., 302.

To compel respondent to rescind a resolution declaring James R. Champ entitled to a seat on respondent board, and to admit relator as a member thereof.

Denied June 30th, 1893, with costs, on the ground that

mandamus is not the proper proceeding in which to oust from office an acting officer who is not a party thereto.

1196 OLSON vs. GAVAGAN (Twp. Treas.), No. 11976½.

To compel respondent to deliver to relator, treasurer-elect, the moneys, books, papers, records, etc., pertaining to the office of township treasurer.

Order to show cause denied May 6, 1891.

An attempt to settle the question of the title to office in a mandamus proceeding.

1197 KETCHAM (Treasurer, Highland Park Village) vs. WAGNER, No. 12052½.

To compel respondent to deliver over to relator books, papers and property, pertaining to the office of treasurer of the Village of Highland Park.

Order to show cause denied July 28, 1891.

1198 KETCHAM (Treasurer, Highland Park Village), vs. WAGNER, No. 12510, 90 M., 271.

To compel delivery to relator of certain books, papers and money in respondent's hands as former treasurer.

Granted February 10, 1892, without costs, and held, that respondent having acted in good faith, is entitled to retain money in his hands to defray his expenses herein, which sum is hereby fixed at \$75.

See Atty. Genl. vs. Highland Park, 88 M., 653.

1199 LORANGER vs. NAVARRE, No. 13570, 97 M., 615.

To compel respondent to deliver over to relator the moneys,

books and papers pertaining to the office of township treasurer, relator claiming to have been elected to that office.

Denied June 20, 1893, with costs.

Respondent answers, denying that relator was elected township treasurer, alleging that another was elected to that office, and that upon proper application respondent had turned over to such person so elected, said moneys, books and papers.

1200 YOUNGBLOOD vs. STELLWAGEN (County Treasurer, Wayne), 33 M., 1.

Relator had been township treasurer, but the territory within which he resided had been taken from the township and annexed to the City of Detroit, whereupon the township board appointed another township treasurer.

Held, that relator was not treasurer of the township and had no right to the moneys which he sought to compel payment of.

Decided October 26, 1875.

1201 GRAND RAPIDS GUARDS vs. BULKLEY, No. 13286, 97 M., 610.

To compel a treasurer to deliver over to alleged successor, books, moneys, etc., in a case where the Board of Directors elected to serve from and after January 1, met before January 1, and assumed to elect said successor.

Denied February 1, 1893, with costs.

1202 CUTHBERT vs. COMMON COUNCIL (Detroit), 18 M., 337.

Relator claimed to have been elected to the office of assessor, but that the council wrongfully deprived him of the office by refusing to count the vote of one of the members thereof, which was in his favor.

Denied April 28, 1869.

Held, not the proper proceeding to try the right to a public office.

1204 TRAINOR vs. BOARD OF AUDITORS (Wayne), No. 11988½.

1205 BURGESS vs. BOARD of AUDITORS (Wayne), No. 11991½.

1206 CLARK vs. BOARD OF AUDITORS (Wayne), No. 11992½.

1207 WILLCOXSON vs. BOARD OF AUDITORS (Wayne), No. 11993½; 89 M., 162; 15 L. R. A., 95.

To compel the reinstatement of relators, a file clerk of county records, a chief janitor of county buildings, a county physician and a special officer in justices' court, who had been appointed by the board, but removed for alleged incompetency without charges, notice or hearing.

Denied December 21, 1891, without costs.

Held, that How. Stat., Sec. 483, subd. 17, authorized removal for incompetency; that file clerks and janitors are not officers, but employes, and that the other two were not holders of such offices as courts would concern themselves about in quo warranto proceedings.

1208 COMMISSIONERS OF PARKS AND BOULEVARDS vs. COMMON COUNCIL OF THE CITY OF DETROIT ET AL., 80 M., 663.

To compel the Common Council to rescind their action in the appointment of their co-respondents as superintendents of

Belle Isle bridge, and to turn over the control of said bridge to relators.

Granted in part, without costs, May 16, 1890.

1209 WELLMAN vs. BOARD OF MET. POLICE (Detroit), No. 11723, 84 M., 558.

To revoke an order dismissing relator from the police force upon a general charge of "conduct immoral and unbecoming an officer," without any specific allegation as to the conduct complained of.

Granted February 11, 1891, without costs.

1210 WILKINSON vs. BOARD OF POLICE COMMISSIONERS (Saginaw), No. 14975; 2 D. L. N., 708; 65 N. W., 668. (Certiorari to Saginaw.)

To compel respondents to reinstate relator as a member of the police force.

The circuit judge denied the writ. Reversed and writ granted December 17, 1895, with costs. Rehearing denied, with costs, March 3, 1896.

Charges were preferred against relator, and, although he was acquitted of the offenses specified, he was found guilty under the general charge of conduct unbecoming an officer.

1211 MICHELSON vs. BOARD OF POLICE COMMISSIONERS AND COMMON COUNCIL (Saginaw), No. 15839; 3 D. L. N., 810; 70 N. W., 142. (Certiorari to Saginaw.)

To compel the police commissioners to reinstate relator upon the police force, and the Common Council to pay to relator his salary while under suspension.

The circuit judge denied the writ. Affirmed February 18, 1897, with costs.

Relator was removed in December, 1894, and apparently acquiesced in the action of the board, and on March 12, 1896, the petition in the present case was filed. It appeared, however, by the return that on January 8, 1896, relator had been removed regularly, so that he is not entitled to be reinstated. The other question is ruled by *Wilkinson vs. Police Commissioners, Supra*.

1212 FISCHER vs. BOARD OF POLICE COMMISSIONERS (Bay City), No. 15874½.

Application for a writ of certiorari, to review an order denying a mandamus to compel respondents to reinstate relator as a member of the police force.

Denied October 20, 1896.

Relator had been granted a leave of absence August 14, 1894, to August 25, 1894. On August 26, relator became engaged in a drunken brawl, and with a revolver, which he carried concealed on his person, shot and killed one of the party; was arrested and confined in jail until his trial in May, 1895, when he was convicted of manslaughter. In September, 1894, a resolution was adopted by the respondent board suspending relator, and on September 25, 1895, relator petitioned the board for reinstatement. The answer set forth that relator had, at the time of the adoption of the resolution of suspension, abandoned and relinquished his position as patrolman, and had surrendered all claim to the emoluments of the said office.

Relator contended that inasmuch as he had been suspended without charges he was entitled to a peremptory writ for his reinstatement, notwithstanding the allegations of the answer.

1213 ENRIGHT vs. WILBER ET AL. (Police Comrs., Port Huron), No. 14286. (Certiorari to St. Clair.)

To reinstate relator as a member of the police force.

The circuit judge granted the mandamus. Reversed, with costs of both courts, November 20, 1894. Motion for re-hearing denied January 23, 1895.

In 1893 the Charter of the City of Port Huron was amended (Local Acts 1893, p. 1165), creating a police commission. The commission was given exclusive power to appoint members of the force, to suspend or remove policemen, under or for such causes as shall be fixed by ordinance and the rules adopted by the commission, and the act provided "that the present police force, including the chief, shall continue to hold office until their successors are appointed and qualified."

The commission adopted certain rules as to qualifications of applicants for place upon the force, which required that each applicant should submit to an examination by a physician, as to his health and physical condition. Relator and all the members of the old force were required to submit to such examination. The physician reported that relator was troubled with varicose veins and that his eyesight was poor, and respondents dismissed him because they determined that he was physically incompetent to discharge the duties of the position. Relator insisted that charges and specifications were necessary.

1214 GOODFELLOW vs. COMMON COUNCIL (Detroit), No. 14432; 102 M., 343. (Certiorari to Wayne.)

To compel respondent to proceed to a hearing upon charges preferred against relator as a member of the Board of Fire Commissioners.

The circuit judge denied the application.

Affirmed November 1, 1894, on the ground that the indefinite action of the council is equivalent to a dismissal of the charges.

**1215 ATTORNEY GENERAL vs. COMMON COUNCIL (Detroit),
29 M., 108.**

To compel respondent to act upon nominations made by the mayor under the act establishing a board of public works.

Granted.

Respondents insisted that the act was invalid because in conflict with the Constitution of the State.

**1216 ATTORNEY GENERAL vs. COMMON COUNCIL (Detroit),
58 M., 213.**

To compel respondent to take action upon certain nominations made by the mayor, of persons to act as a "board of commissioners of registration and election" for the City of Detroit.

Denied October 14, 1885.

The act providing for the appointment is held unconstitutional, (1) as making particular political opinions a condition of holding office; (2) as sub-delegating the popular power of choosing officers, and (3) as interfering with the municipal right to local government.

**1217 FITZGERALD (Mayor, Port Huron) vs. WHIPPLE (Alderman),
41 M., 548.**

To compel respondent to attend the meetings of the Common Council and to perform his general official duties regularly.

Denied October 7, 1879.

Held, that mandamus would not lie.

**1217½ COUNTY OF BAY vs. BULLOCK (Supervisor of Deep River
Twp.), 51 M., 544.**

To compel respondent to return his tax roll to the Board of Supervisors of Bay County, and to attend the meetings of that

board, relator insisting that the act of the Legislature setting off the County of Arenac, including Deep River Township, from Bay County, is invalid.

Order to show cause denied October 18, 1883.

1218 WORKMAN vs. BOARD OF EDUCATION (Detroit), 18 M., 400.

To compel respondents to admit a colored child to the public schools.

Granted May 12, 1869.

The proceedings being for the benefit of a minor, the father is entitled to ascertain the right.

It was objected that the application for the writ did not show affirmatively that the child possessed the necessary qualifications for admission.

Held, that the board having made the child's color the sole objection, the relator, if this fails, is presumptively entitled to the writ.

1219 HAVEN vs. SCHOOL DISTRICT, No. 11728.

To compel the reinstatement, at the instance of the father, of a suspended pupil.

Granted January 22, 1891, without costs.

A regulation had been adopted by the school board allowing scholars to leave the school room during its sessions as they considered it necessary, or as they saw fit for a reasonable length of time, but in consequence, such scholar so absenting was required to bring in the next morning the spelling lesson for the next day written out fifteen times in rotation. The scholar, a girl of eleven years of age, had, during the afternoon session, which occupied two hours and forty-five minutes without intermission, left the school room for a few minutes to attend to a call of nature. Her father (relator) regarding the rule as

an unreasonable one, directed her not to comply therewith, and she was suspended. The return does not deny, but declines to admit, that the scholar left the school room for the purpose named, but the petition sets forth, that relator afterwards presented a petition to the school board, setting forth the facts, asking that the same be investigated, and that his daughter be reinstated without being required to submit to said punishment, but the board, without denying the fact, insisted upon the application of the rule in all cases, so that the only question before the court was the reasonableness of the rule.

Counsel for relator conceded the right of the board to adopt rules and regulations but insisted that such rules must be reasonable, citing *Holman vs. School Trustees*, 77 M., 605 (1220); *Fertich vs. Mitchener*, 111 Ind., 472; *Thompson vs. Beaver*, 63 Ill., 353; *Roberts vs. Boston*, 5 Cush., 198; *Sherman vs. Charleston*, 8 Cush., 160; *Spiller vs. Woburn*, 12 Allen, 127; *Hodgkins vs. Rockport*, 105 Mass., 475; *State vs. Burton*, 45 Wis., 150.

As to the consequences of undue restraint under the circumstances, counsel cited *Tanner's Practice of Medicine*, 448-553-556; *Gant's Treatise of Diseases of the Bladder*, 54.

**1220 HOLMAN vs. TRUSTEES SCHOOL DISTRICT No. 5 (Avon),
77 M., 605.**

To compel respondent to reinstate, in the public schools, relator's son, who had been suspended, for negligently and carelessly breaking a light of glass in a window in the school building, until the glass was replaced or satisfaction made therefor.

Granted November 8, 1889.

Held, that the term "misdemeanor" as used in How. Stat., Sec. 5069, means gross misbehavior or misconduct, and that before a pupil can be suspended or expelled from the public schools, under said section, he must be guilty of some willful or malicious act, of detriment to the school, and the misconduct must be gross—something more than a petty or trivial offense against the rules—or he must be persistent in his disobedience of the proper and reasonable rules and regulations of the school.

1221 BURT vs. GRAND LODGE F. & A. M., 44 M., 208.

To compel reinstatement in a Masonic lodge, where relator had previously appealed to the tribunal established by the society to hear such complaints, and the expulsion had been confirmed. Order to show cause denied June 15, 1880.

1222 BURT vs. GRAND LODGE F. & A. M., 66 M., 85.

To compel the rescission of an order expelling petitioner from a Masonic lodge.

Denied May 5, 1887.

The only ground on which the courts can interfere with organized bodies by mandamus in aid of a member is, that, as corporations they are subject to our judicial oversight to prevent their depriving members of corporate privileges illegally. Where such bodies are not corporations, or where the question presented does not involve tangible and valuable corporate privileges, we cannot interfere in this way.

1223 LAMPHERE vs. GRAND LODGE A. O. U. W., 47 M., 429.

To compel the recognition of relator as a member of one of the subordinate lodges of the order.

Granted January 13, 1882.

Relator was suspended for refusing to pay an assessment made under the order of the Supreme Lodge, which is a foreign corporation, to pay losses on risks taken in other States. It was held, that relator was not liable to pay the assessment. No point was made on the argument as to the propriety of affording to the relator this proper remedy, but as the case was one in which the law under which respondent is organized is being ignored and perverted, the court was not disposed to go beyond an examination of the equities.

1224 ALLNUTT vs. ANCIENT ORDER OF FORESTERS, 62 M., 110.

To compel reinstatement of member.

Granted June 24, 1886.

Held, that members of an incorporated benevolent society are entitled to protection in their rights, and when illegally suspended, mandamus lies for their reinstatement.

1225 ROEHLER vs. MECHANICS' AID SOCIETY, 22 M., 86.

To compel respondent to restore to relator his rights as a member.

Granted October 26, 1870.

Relator was suspended upon a verbal charge of slander.

Held, that the words constituting the alleged offense should be specifically set forth.

1226 ERD vs. BAVARIAN NATIONAL AID & RELIEF ASSOCIATION OF THE CITY OF DETROIT, 67 M., 233.

To restore relator to membership in respondent society, which is a corporation organized under the laws of the State.

Granted October 13, 1887.

Held, that the fine, for the nonpayment of which relator was suspended, was illegally imposed; that a person who is a member of a corporation, unless he has waived or forfeited the right, is always entitled to a copy of the charges preferred against him, to be present at the taking of testimony, or an opportunity afforded him so to do, and to produce testimony in his own behalf. It appeared that relator at a meeting of the society was verbally complained against and charged with publicly upon the street making certain statements to a person named and to others; that a committee was appointed to investigate, who reported at a subsequent meeting that relator was guilty of the conduct charged, whereupon a motion was made imposing the fine.

1227 BURTON vs. ST. GEORGE'S SOCIETY, 28 M., 260.

To restore relator to membership.

Denied 1873.

Relator insisted that the charges were insufficient and the proceedings irregular.

Held otherwise.

1228 BOSTWICK vs. FIRE DEPARTMENT (Detroit), 49 M., 513.

To compel restoration to membership.

Denied January 5, 1883.

Where one who was excluded for non-payment of dues, by proceedings of doubtful validity, but who had practically acquiesced, and did not tender payment, or seek to be reinstated for upwards of 19 years and does not explain the delay, the writ will be denied.

1229 PULFORD vs. THE FIRE DEPARTMENT OF THE CITY OF DETROIT, 31 M., 457.

To compel respondents to restore relator to his position as a member of the Fire Department, which respondents claim was forfeited during the absence of relator on military duty during the war, for non-payment of yearly dues.

Granted, with costs, April 20, 1875.

Relator is not shown or alleged to have received any personal notice of the default of his dues, or of the proceedings to forfeit his membership. On his return after the war he applied for restoration and offered to pay his dues, as he did also before commencing this proceeding, but was refused.

1230 MEURER vs. DETROIT MUSICIANS' BEN. & PROT. ASS'N, No. 13378, 95 M., 451.

To compel respondent to restore relator to membership, of

which he had been deprived for the non-payment of a fine, different from that imposed by its by-laws, for the act complained of.

Granted April 28, 1893, with costs.

Held, that it does not lie with an association assuming to exercise corporate functions to contest its own existence in such a case.

1231 HARGNELL vs. LAFAYETTE BENEFIT SOCIETY, 47 M., 648.

To compel reinstatement of a member suspended for contumacious and willful violation of a rule.

Denied January 24, 1882.

1232 MEISTER vs. ANSHEI CHESED HEBREW CONGREGATION OF BAY CITY, 37 M., 542.

To compel a religious corporation to restore to membership a person whom it had expelled.

Denied October 30, 1877.

It appeared from the pleadings that the society had no property; that its existence would be imperiled if relator were restored; that he had acted in hostility to the society's interest; had given grounds for regular removal, and if restored might be at once expelled.

1233 DEMPSEY vs. NORTH MICH. CONFERENCE WESLEYAN METHODISTS, No. 12902, 98 M., 444.

To compel reinstatement of relator as a minister, who had been suspended from office, on the ground that he had no notice of trial, when it appears that he had actual notice, was present and participated.

Denied January 9, 1894, with costs.

Held, that the incidental irregularities of the trial are not subject to review in a mandamus proceeding.

1234 ATTORNEY GENERAL vs. PROBATE JUDGE (Van Buren).
30 M., 385.

To compel respondent to appoint an inspector of alcoholic liquors under Comp. Laws 1871, Sec. 1449-57.

Denied October 21, 1874, on the ground that the Act is defective.

1235 ATTORNEY GENERAL vs. HUEBNER (County Treasurer), Wayne), No. 12736½, 91 M., 436.

To compel respondent to refrain from receiving and receipting for liquor taxes before the filing of the statutory bond.

Granted April 22, 1892, without costs. See Rode vs. Phelps (Co. Treas.) (1244).

1236 BROWN vs. KNAPP (County Treasurer), 54 M., 132.

To compel a County Treasurer to permit the inspection of liquor bonds filed in his office, by a member of the Board of Review of the City of Ann Arbor.

Granted June 11, 1884, with costs.

1237 THOMAS vs. HAMILTON, No. 14210, 101 M., 387. (Certiorari to Van Buren.)

To compel respondent, a druggist, to allow relator to examine the book, provided for by statute, containing the record of sales of liquor. The circuit judge granted the writ.

Reversed July 5, 1894, with costs of both courts, on the ground (1) that as a general rule mandamus will not run against a private individual; Merrill, Sec. 13, 2 to 23. (2) That the writ does not lie to enforce the performance of a public duty at the instance of a private individual, or in any case unless he has some private or particular interest to be subserved, or some

particular right to be preserved or protected, independent of that which he holds in common with the public at large. *Drake vs. Regents*, 4 M., 98 (1088); *Russell vs. Inspectors et al.*, 4 M., 187 (1093); *Delbridge vs. Green*, 29 M., 121 (1609); *Smith vs. Mayor et al.*, 81 M., 123 (1104).

1238 SPRINGWELLS TOWNSHIP vs. COUNTY TREASURER
(Wayne), 58 M., 240.

1239 HAMTRAMCK TOWNSHIP vs. COUNTY TREASURER
(Wayne), 58 M., 240.

To compel respondent to pay over to relators the amount of certain liquor taxes, collected from sundry liquor dealers, in certain territory which, at the time the tax became due and payable, belonged to the above named townships, but which had been afterwards, and before the collection of the tax, detached and attached to the City of Detroit.

Granted October 14, 1885.

1240 VAN DANN ET AL. vs. UHL (Mayor) AND SHINKMAN (City Clerk, Grand Rapids), No. 12308½.

To compel respondents to issue a license authorizing relators to carry on the business of saloon-keepers.

Order to show cause denied October 29, 1891.

Relators had already made three applications for a license, one of which was denied by the Common Council, and the action of the Council in granting the others had been vetoed by the Mayor. The last application was granted by the Council and vetoed by the Mayor, who claimed that under the charter the council had the right to refuse to license the keeping of a saloon in a given locality; that under the action already had the question of a license for a saloon in the locality named had

been disposed of and that action had not been re-considered; that the application for the license was not a new one but was the same that had been presented and acted upon and disposed of, and that the application itself was not signed.

1241 SHERLOCK vs. STUART (Mayor) AND SHINKMAN (City Clerk, of Grand Rapids), No. 13254; 96 M., 193; 21 L. R. A., 580.

To compel the issuance of a liquor license under the charter of the City of Grand Rapids.

Denied June 23, 1893, with costs.

1242 MEYERS vs. STUART (Mayor) AND SHINKMAN (City Clerk, of Grand Rapids), No. 13450½.

To compel the issuance of a saloon license under the ordinance, the Mayor having vetoed the resolution of the Common Council granting the license and approving the bond.

Order to show cause denied June 23, 1893.

1243 O'HALLORAN ET AL. vs. MAYOR AND RECORDER (Jackson), No. 15149½; 2 D. L. N., 623; 64 N. W., 1046. (Certiorari to Jackson.)

To compel the Mayor to file his approval of a liquor bond, and the recorder to endorse upon the bond the approval of the Council.

The circuit judge dismissed the petition as to the mayor and granted the writ as to the recorder.

Affirmed November 19, 1895, with costs.

The Mayor vetoed the proceedings of the Council approving the bond, and the recorder refused to certify the action of the Council, on the ground that a two-thirds vote of the Council was necessary, as in the passage of an ordinance, and the resolution was adopted by a majority vote only.

Held, that the charter provision, requiring ordinances or resolutions of the Council to be approved by the Mayor, has no application to the approval of a liquor bond, and that a two-thirds vote of the Council is not necessary.

1244 RODE vs. PHELPS (County Treasurer, Wayne), 80 M., 598.

To compel respondent to receive the tax of \$300 provided for by the liquor law of 1887, and issue a receipt therefor, on the ground that the law of 1889 is unconstitutional.

Denied April 29, 1890, without costs.

Law held unconstitutional, but writ refused because there is no showing that a bond has been approved and filed, as required by the law of 1887.

1245 GIDDINGS vs. WELLS (County Treasurer, Van Buren), No. 13926½.

To compel respondent to accept the tax and relator's bond and issue the statutory receipt and card for selling intoxicating liquors, the relator's contention being that the proceedings under the local option law are invalid.

Order to show cause denied January 2, 1894, on the ground that the application should be made to the Circuit Court.

1246 GIDDINGS vs. COUNTY TREASURER (Van Buren), No. 14000, 99 M., 221. (Certiorari to Van Buren.)

To compel respondent to accept relator's bond and the tax for selling intoxicating liquors, and to issue the statutory receipt and card, on the ground that the proceedings in that county under the local option law are invalid.

The circuit judge denied the writ.

Affirmed February 27, 1894.

1247 POST vs. VILLAGE OF SPARTA, 58 M., 212.

To compel the approval of a liquor dealer's bond by the council of the village, organized under the General Incorporation Law, approved April 1, 1875, as amended by Act No. 52, of 1883, which empowers such villages to suppress saloons.

Denied October 7, 1885.

1248 McHENRY ET AL. vs. TOWNSHIP BOARD (Chippewa), 65 M., 9.

To compel respondent to approve of a druggist's bond, the same being fixed by the board at \$3,000.

Denied February 3, 1887.

The board found one of the sureties upon the bond offered insufficient, and the return disclosed nothing showing that the discretionary power of the board was not exercised reasonably and in good faith.

1249 POST vs. TOWNSHIP BOARD (Sparta), 63 M., 323.

To compel approval of liquor bond.

Denied October 21, 1886.

The board answered that they could not agree in finding the sureties responsible to a sufficient amount.

1250 POST vs. TOWNSHIP BOARD (Sparta), 64 M., 597.

To compel approval of liquor bond.

Denied January 27, 1887.

See No. 1249.

1251 HAYWARD vs. COMMON COUNCIL (Wayland), No. 11991.

To compel approval of liquor bond.

Granted May 19, 1891, without costs.

Respondents cited *Post vs. Sparta*, 58 M., 212, but here the village was incorporated under Act No. 366, Laws of 1869, and not under the General Incorporation Laws approved April 1, 1875, as amended by Act No. 52, Laws of 1883. An ordinance, passed in April, 1887, prohibited the keeping of a saloon or the selling of intoxicating liquors in the village.

1252 FRIESNER vs. COMMON COUNCIL (Charlotte), No. 12745, 91 M., 504.

To compel approval of liquor bond.

Denied May 11, 1892.

Relator attacked the proceedings, for the prohibition of the traffic, had under Act No. 207, Laws of 1889.

1253 POTTER vs. COMMON COUNCIL (Homer), 59 M., 8.

To compel the Village Council to approve a liquor dealer's bond.

Granted January 13, 1886.

Held, that the Council has the same discretion in such matters and no more than that possessed by other persons called upon to approve sureties; that they have no right to disregard affidavits without legal proof, or reject sureties without at once giving the reason and a speedy opportunity to meet the facts or supply others.

The return was demurred to, and it was held, that the facts relied upon in justification should be set forth in the return and not in individual affidavits thereto appended and which are properly no part thereof, and that the only redress the court can give for an evasive answer is a peremptory mandamus and costs. *Fletcher vs. Circuit Judge*, 39 M., 301 (5).

1254 GOSS vs. COMMON COUNCIL (Vermontville), 44 M., 319.

Where mandamus is sought to compel the approval of a liquor bond, the application should show the reason for the refusal if any was given, and the circumstances of such refusal, otherwise the reason must be presumed sufficient and the writ will be denied.

October 5, 1880.

1255 NEGLEY vs. COMMON COUNCIL (Sturgis), 44 M., 1.

To compel the Village Council to act on and approve a liquor bond, where the ground on which the council refused is not set forth.

Order to show cause denied June 8, 1880.

1256 PARKER vs. BOARD OF TRUSTEES (Portland), 54 M., 308.

To compel a village board to approve a liquor dealer's bond, where there was nothing to show that the refusal to approve was capricious, or to rebut the presumption that the board had fairly passed upon all the questions which determined the sufficiency of the bond and the reliability of the sureties.

Denied January 6, 1885.

1257 AMPERSE vs. COMMON COUNCIL (Kalamazoo), 59 M., 78.

To compel council to act upon approval of a liquor bond.
Granted January 13, 1886.

The only grounds assigned for refusing to approve the bond were, that relator was a married woman, and that the council had a right to reject a liquor bond without assigning any reason therefor.

**1258 WARNER vs. BOARD OF TRUSTEES (Village of Lawrence),
62 M., 251.**

To compel approval of a liquor bond.

Granted July 1, 1886.

Relator presented the bond April 12, 1886. The matter was deferred until May 3, 1886, on which day an ordinance of the village, passed April 9, 1886, took effect and respondents base their refusal upon the ordinance.

Held, that as the statute required relator to file his bond on or before May 1, it was the duty of respondents to act upon it before that date and that said ordinance had no force until May 3.

1259 KUHN vs. COMMON COUNCIL (Detroit), 70 M., 534.

To compel the approval of liquor dealer's bond.

Granted June 8, 1888.

**1260 GUST vs. PRESIDENT AND TRUSTEES OF THE VILLAGE OF
WHITE CLOUD, No. 12869.**

To compel the approval of a liquor bond.

Denied June 29, 1892, with costs.

The answer set forth that one of the sureties on the bond was the treasurer of said village, and that he was therefore ineligible, and further, that said surety was not, in their judgment, worth the amount of said bond, over and above his indebtedness and exemption.

**1261 FEEK vs. TOWNSHIP BOARD OF BLOOMINGDALE, 82 M., 393
10 L. R. A., 69.**

To compel the approval of a liquor bond under Act. No. 313, Laws of 1887, where proceedings had been had to prohibit

the sale of liquor in that county, under Act. No. 207, Laws of 1889, but it is insisted that the last named law is unconstitutional.

Denied October 10, 1890.

1262 KEEFER vs. COMMON COUNCIL (Hillsdale), 70 M., 413.

To compel respondent to approve of relator's bond as a retail liquor dealer.

Granted May 18, 1888.

The case involved the validity of proceedings taken under Act No. 197, Laws of 1887, to prohibit the sale of liquor, and it was held that said act was invalid, because its object was to prohibit, and that object is not expressed in the title "to regulate." Ruled by In re Hauck, 70 M., 396.

1263 WHITNEY ET AL. vs. TOWNSHIP BOARD OF GRAND RAPIDS, 71 M., 234.

To compel respondent to approve a liquor bond.

Denied July 11, 1888.

The case involved the constitutionality of Act No. 31, Laws of 1887, providing that it shall not be lawful to establish or maintain a saloon or other place of entertainment in which intoxicating liquors are sold or kept for sale, within one mile of the Soldiers' Home.

1264 GAWLEY ET AL. vs. COMMON COUNCIL (Le Roy), No. 14480½.

To compel the approval of a liquor bond.

Order to show cause denied October 30, 1894.

The proceedings of the council indicate that the objection to the bond was to the sufficiency of the sureties. Attached to the petition are a number of affidavits of recent date as to the re-

sponsibility of the sureties, but these were not presented to the council.

1265 PALMER vs. PRESIDENT AND TRUSTEES OF VILLAGE OF HARTFORD, 73 M., 96.

. . . To compel approval of a liquor dealer's bond, where the refusal was based upon the pecuniary irresponsibility of the sureties.
Denied November 28, 1888.

1266 WOLFSON vs. TOWNSHIP BOARD (Rubicon), 63 M., 49.

To compel approval of liquor bond.
Denied October 7, 1886.

In the judgment of the board, one of the sureties was not pecuniarily responsible, and it was held that the board having come to a deliberate conclusion upon testimony, mandamus will not disturb the judgment thus exercised.

1267 McHENRY ET AL. vs. TOWNSHIP BOARD (Chippewa), 65 M., 9.

To compel the approval of a druggist's liquor bond.
Denied February 3, 1887.

It appeared that the reason for the rejection of the bond was the insufficiency of the sureties, and that the board acted in good faith.

1268 SCHMITT ET AL. vs. COMMON COUNCIL (Clinton), No. 15664; 3 D. L. N., 590; 69 N. W., 153. (Certiorari to Lenawee.)

To compel respondent to accept a liquor dealer's bond, executed by relators as principals, and the Fidelity Deposit Company, as sole security.

Reversed and writ denied December 9, 1896, with costs of both courts.

1269 COURTRIGHT vs. COMMON COUNCIL (Newaygo), No. 13545, 96 M., 290.

To compel the approval of a liquor bond, the refusal being put upon the ground that relator maintains two separate bars in the same building.

Granted June 30, 1893, without costs.

1270 MOREHOUSE ET AL. vs. COMMON COUNCIL (North Adams), No. 12816.

To compel approval of druggists' bond.

Granted in the alternative May 13, 1892.

Answer afterwards filed and writ granted, with costs, June 7, 1892.

1271 COVERT vs. MUNSON (County Treasurer, Gratiot), No. 12921, 93 M., 603.

To compel respondent to accept relator's liquor bond and the tax, and to issue a receipt therefor.

Granted December 2, 1892, without costs.

Respondent insisted that the local option law was in force in that county, but the court held that the proceedings were invalid.

1272 THOMAS vs. ABBOTT (County Treasurer), No. 14756, 105 M., 687. (Certiorari to Alpena.)

To compel respondent to accept and file relator's bond as a liquor dealer.

The circuit judge denied the writ. Affirmed July 2, 1895, with costs.

Relator contended that the proceedings, under the local option law of that county, are invalid.

1273 MORAN vs. DARBY (County Treasurer, Kalkaska), No. 13546, 97 M., 186.

To compel acceptance of tax and bond and issue of receipt, authorizing the sale of liquor.

Granted October 13, 1893, without costs.

The question involved the validity of proceedings taken to prohibit the sale of liquor, under Act No. 207, Laws of 1889.

1274 NORTHWAY (Pros. Atty.) vs. SHERIDAN, No. 15683; 3 D. L. N., 556; 69 N. W., 82.

To compel respondent to furnish to the state board of equalization the assessment roll of his township, in order to enable said board to discharge its duties, the proceeding being instituted by the board of supervisors.

Respondent filed a cross-petition, setting forth that while county clerk he had been elected supervisor, and that the board of supervisors refused to recognize him as such, and praying that they be compelled to recognize him. The question in controversy was, whether the offices of county clerk and supervisor could be held by one person at the same time.

The writ as prayed for in the cross-petition, was granted Dec. 1, 1896, with costs, the court holding that respondent, by accepting the office of supervisor had vacated the office of clerk.

It appeared that the state board of equalization was to meet on the third Monday in August, and that the Circuit Court for the county would not convene until October, hence the proceeding was entertained in the Supreme Court.

1275 McLAUGHLIN (City Assessor) vs. LANGE (Cashier), No. 12819.

To compel the filing with the county clerk of a true statement of the names of the owners of bank stock.

Denied June 8, 1892, with costs.

Respondent is the cashier of the bank in question.

The answer set forth that a statement had been filed with the county clerk, and that the statement so filed was correct as appeared by the bank books.

1276 ATTORNEY GENERAL vs. BOARD OF SUPERVISORS (Sanilac), 71 M., 16.

To compel respondents to obey Act No. 262, Laws of 1887, providing for reporting mortgages for assessment purposes.

Granted June 22, 1888.

1277 BARNES (Drain Comr.) vs. SNITGEN (Township Clerk, Westphalia), No. 13093.

To compel respondent to deliver to the supervisor of said township a certified statement of the amount of drain taxes to be assessed upon said township at large for the year 1892, for the construction of a certain drain, and also a certified statement of the descriptions assessed for benefits, and the amount to be assessed upon each description.

Granted October 12, 1892, without costs.

The clerk answered that the special assessment roll was not filed with him on or before the last Wednesday in September, and not until October 1st, the last day under the statute upon which he could make and deliver to the supervisor a certified statement of the amounts of the drain taxes to be assessed upon the township. Laws of 1889, Chap. 6, Secs 2 and 3.

Relator insisted that the provision requiring the roll to be filed on or before the last Wednesday in September, was directory only. Cooley on Taxation (Ed. 1876), pages 212-213; Smith vs. Crittenden, 16 M., 152.

**1278 LAUBACK ET AL. (Co. Drain Comrs.) vs. TOLAND (Supv.)
AND O'MEARA (Twp. Clerk), No. 15030. Certiorari to Kent.**

To compel the township clerk to make to the supervisor a certified statement of the amount of the taxes to be assessed, on account of the construction of a drain, and also a statement of the lands assessed for benefits, together with the amount assessed, and to compel the supervisor to present such statements to the board of supervisors at the annual meeting thereof.

The circuit judge granted the writ. Affirmed Nov. 5, 1895. with costs.

**1279 RAMSEY (School Dist. Assr.) vs. TOWNSHIP CLERK (Everett),
52 M., 344.**

To compel respondent, clerk of the township to which relator's district formerly belonged, to certify to the supervisor of the township to which it now belongs, the amount ascertained by the inspectors as due to relator's district from what remained of the old district out of which it was organized.

Granted December 21, 1883.

**1280 MANISTIQUE BANK vs. CLERK AND TOWNSHIP BOARD
(Germfast), No. 12887.**

To compel the clerk of the township to prepare and present to the supervisors the proper certificate for raising by taxation the amount of certain highway orders, and to compel the township board to raise the amount of said orders by taxation.

Granted July 28, 1892, in default of answer.

1281 COURTRIGHT vs. TOWNSHIP CLERK (Brooks), 54 M., 182.

To require the township clerk to issue the proper certificate for the levy of a tax to satisfy a judgment against the township.

Granted June 18, 1884.

1282 RIGGS (Pros. Atty.) vs. HILL (Supervisor), No. 11950½.

To compel respondent, a supervisor, to include certain lands upon the assessment roll.

Denied April 21, 1891, without costs.

Respondent refused to include the lands because the same had by an act of the legislature, approved March 25, 1891, been detached from that township and formed into a separate township. Relator contended that said act was unconstitutional because it provided that the first annual meeting for the election of officers should be held on the first Monday of May, 1891, and that in consequence the residents of that territory were deprived of the constitutional right to vote at the April election.

1283 DRYER vs. BOARD OF REVIEW (Bath Township), No. 12907.

To compel respondents to place upon the assessment roll so much of certain real estate owned by a lodge of the Independent Order of Odd Fellows, as was not used for lodge purposes, but was rented for mercantile purposes.

Granted in the alternative June 28, 1892.

1284 ATTORNEY GENERAL vs. COMMON COUNCIL (Detroit), No. 16340, 4 D. L. N., 326.

To compel respondent to levy taxes upon the real and personal property of the Masonic Temple Association, of the Harmonie Society, of the Arbeiter Society, and of the Detroit Telephone Company, the same having been assessed by the board of assessors, but respondent, sitting as a board of review, held that the property of the three first named societies was exempt from taxation under Sub. 4, Sec. 7, Act No. 206, Public Acts of 1893, and reduced the valuation of the last named company to a nominal figure.

Granted as to the property of the Masonic Temple Association,

the Arbeiter Society and the Harmonie Society, on the ground that the same are not exempt, and held that the Telephone Company is exempt.

1285 OSBORNE vs. LINDOW (Supervisor, China), 78 M., 606.

To compel respondent to place on the assessment roll of his township certain land alleged by relator to be within the local boundaries of said township, but claimed by the respondent to be in another township.

Denied December 28, 1889.

Held, that mandamus is inapplicable.

1286 BAIRD (Director of Union School District No. 1) vs. SHEA (Supervisor, Cottrellville), No. 12360, 88 M., 385.

To compel respondent to assess a portion of his township for school purposes.

When Marine City was incorporated, School District No. 1, of the township of Cottrellville, embraced territory both within and without the city limits, and the act of incorporation, No. 500 of Local Acts of 1887, provided that it should not be construed as changing the school districts of Cottrellville, and to the present time that portion of the district lying without the city, some 1,300 acres, has paid taxes for school purposes to Marine City. By Act No. 382, Local Acts of 1891, this outside territory was attached to School District No. 7, of Cottrellville, but relator insisted that the act was void, because of misdescription therein.

Denied November 18, 1891, with costs.

1287 MAURER ET AL. vs. CLIFF (Supervisor, Richmond Township), No. 13159, 94 M., 194.

To compel respondent to list and assess logs and lumber piled

along the railroad track waiting the convenience of the owner or facilities for shipment.

Denied without costs December 1, 1892, on the ground that to grant the writ would be to deprive the owner of the substantial right to review the assessment, either as to the amount or the legality of an assessment of the same property made elsewhere.

Held, that the logs and lumber were not in transit within the meaning of the tax law.

1288 ATTORNEY GENERAL vs. BOARD OF SUPERVISORS
(Sanilac), 42 M., 72.

To compel respondent to observe the law respecting the assessment of property at its cash value, in equalizing the valuation of the respective townships for the purposes of a levy of state and county taxes.

Denied October 29, 1879.

Held, that the equalization of valuations for taxation is a political duty, and the power to equalize is exclusive in the supervisors. Held further, that affidavits in answer to an order to show cause cannot be assumed to be evasive, and if so in fact, respondent will be bound by them according to the interpretation individually intended.

1289 ROSE vs. BOARD OF REVIEW (Township of Caledonia),
No. 12049½.

To compel respondent to strike a certain assessment from the roll.

Order to show cause denied June 18, 1891.

1290 BEECHER vs. DETROIT, No. 15619; 3 D. L. N., 450; 68 N. W., 237.
(Certiorari to Wayne.)

To compel the City of Detroit to modify an assessment.

The Circuit Court refused the writ. Affirmed July 28, 1896, with costs.

Held, that an obligation to pay rent under a lease, by the terms of which the rent fluctuates on revaluation at intervals, is not an unconditional debt within Sec. 9, Act No. 206, Laws of 1895.

1291 AURORA IRON MINING CO. vs. BOARD OF REVIEW (Ironwood), No. 12886½.

To revise an assessment roll, on the ground that the assessment of petitioner's property is excessive and above its cash value, while other property specified is assessed at a sum much below its cash value.

Order to show cause denied June 15, 1892.

1292 COMMON COUNCIL (Detroit) vs. RENTZ ET AL. (Board of Assessors), No. 12476; 91 M., 78; 16 L. R. A., 59.

To compel respondents to prepare assessment rolls according to the requirements of Act No. 200, Laws of 1891, and in preparing said rolls:

(a) To assess the value of any land contract to the owner of such security as real estate;

(b) To assess as real estate to the owner thereof the value of any real estate mortgage executed before the tax law of 1891 went into effect;

(c) To assess to any savings bank or insurance company, as real estate the value of any real estate mortgage owned by such bank or insurance company executed since said tax law took effect;

(d) To assess the value of any real estate mortgage executed since said tax law took effect to the owner thereof as real estate;

(e) To assess the value of any real estate mortgage executed since said law took effect, and owned by a non-resident of the state, to such non-resident owner as real estate;

(f) To deduct the value of real estate mortgages owned by any savings bank or insurance company from the value of the capital stock of such bank or insurance company, as determined, for assessment purposes, by the statute in such cases made and provided.

Granted March 18, 1892, without costs.

1292½ BEECHER vs. COMMON COUNCIL (Detroit), No. 16332, 4 D. L. N., 579. (Certiorari to Wayne.)

To compel the correction of an assessment.

The circuit judge denied the writ. Affirmed September 14, 1897.

Relator claimed to be a resident of Negaunee, Mich., and sought to compel respondent to strike the assessment, made against him as a resident of Detroit, from the rolls. The circuit judge held that the answer raised an issue of fact as to relator's residence. A jury was called and found that relator resided in Detroit. The court confirmed the findings. Relator's contention was that there was no testimony which warranted such a finding. The court held otherwise.

1293 WARD vs. BOARD OF ASSESSORS (Detroit), No. 13498½.

To compel respondents to deduct the amounts of certain alleged indebtedness from the amount of his assessment upon personal property.

Order to show cause denied April 28, 1893.

1294 HARRINGTON vs. BOARD OF REVIEW (Port Huron), No. 12785.

To compel respondent to deduct from the assessed valuation of the capital stock of the Port Huron Savings Bank, the amount of certain real estate and mortgages.

Granted May 11, 1892, without costs.

1295 DETROIT TRANSPORTATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12700½, 91 M., 382.

1296 J. EMERY OWEN TRANSPORTATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12699.

1297 STATE TRANSIT COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12699½.

1298 DULUTH & ATLANTIC TRANSPORTATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12700.

1299 HAMTRAMCK TRANSPORTATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12701.

1300 MICHIGAN NAVIGATION COMPANY vs. BOARD OF ASSESSORS (Detroit), 12701½.

1301 PERCHERON STEAM NAVIGATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12702.

1302 WHITNEY TRANSPORTATION COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12702½.

To compel the removal of relator's name from the assessment roll.

In the case of Detroit Transportation Co. vs. Board of Assessors, writ denied April 15, 1892, with costs. In each of the other cases the party was allowed to withdraw the petition.

Petitioner in each case claimed a local habitation outside the city limits, but it was held that such was its nominal domicil only, and that its actual domicil was in the city.

1303 STANDARD LIFE & ACCIDENT COMPANY vs. BOARD OF ASSESSORS (Detroit), No. 12714, 91 M., 517.

To compel deduction from its net assets of amount of its real estate mortgages.

Granted May 6, 1892. See 91 M., 78, [1292]

1304 THE STANDARD LIFE & ACCIDENT INSURANCE CO. vs. BOARD OF ASSESSORS (Detroit), No. 13474, 95 M., 466.

To compel respondent to deduct from the net assets of relator for the purpose of taxation the value of the real estate mortgages held by it.

Granted April 28, 1893, without costs.

1305 UNION TRUST CO. vs. BOARD OF ASSESSORS (Detroit), No. 13491.

To compel board to deduct the amounts of the real estate mortgages held by it from its capital, and to assess the residue.

Granted April 28, 1893, without costs.

1306 LATHAM vs. BOARD OF ASSESSORS (Detroit), No. 12715, 91 M., 509.

To compel the assessment of real estate mortgages held by the Central Savings Bank of Detroit, as real estate, and to deduct the value of the same from the capital stock of the bank.

Granted May 6, 1892. Opinion filed May 11, 1892.

The court held it immaterial that the mortgages provided for

the payment of the tax by the mortgagor. See 91 M., 78. Id. 517.

1307 DETROIT RIVER SAVINGS BANK vs. BOARD OF ASSESSORS (Detroit), No. 12718½, 91 M., 514.

Granted May 6, 1892.

1308 ROBINSON vs. BOARD OF ASSESSORS (Detroit), No. 12719½, 91 M., 516.

Granted May 6, 1892.

Both of these cases involve the same question as was raised in Latham vs. Assessors, Supra.

1309 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Shiawassee), 74 M., 536.

To compel respondent to apportion among the several townships for assessment, the amount of alleged indebtedness from the county to the state.

Denied April 18, 1889, on the ground that certain items should be stricken from the account and the account re-cast.

1310 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Ottawa), 76 M., 295.

To compel respondent to apportion among the townships, for assessment and collection, a balance claimed to be due the state.

Granted in part July 11, 1889.

Held, that loss upon tax lands sold under the provisions of Sec. 124, of the tax law of 1869, is not a proper charge against the county, said act being prospective only in its operation, but where such item has been paid by the county to the state it cannot be

used as a set-off against any lawful claim of the state; that the county is liable for interest on the annual balance due from the county to the state and that How. Stat., Sec. 1140, which provides that all losses that may be sustained by the default of any county treasurer in the discharge of duties imposed upon him by the tax law of 1869 shall be chargeable to the county, covers a default of the treasurer in not paying over the amount due the state on tax sales.

1311 BOARD OF SUPERVISORS (Ontonagon) vs. BOARD OF SUPERVISORS (Gogebic), 74 M., 721.

To have a settlement made between the respective counties opened, and to require respondents to meet with them for the purpose of arranging for a proper and complete settlement providing for the apportionment of State taxes between the two counties.

Denied April 24, 1889.

The respondent county was organized in the spring of 1887 by an act of the legislature, which provided for a settlement between the counties, and a settlement was had, but in 1887 and 1888 the auditor-general laid the apportionment of state taxes of both counties on Ontonagon alone.

Held, that no adjustment could well be made in advance for future state taxes; that the apportionment should be made by the auditor-general; that a settlement already had cannot be disturbed on mandamus, and if an amicable adjustment cannot be effected resort must be had to the usual judicial remedies.

1312 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Menominee), No. 12318, 89 M., 552.

To compel respondent to levy State taxes for the year 1891, apportioned to that county, after the passage of the act creating

the county of Dickinson out of territory formerly within Menominee and other counties, but before the act took effect.

Denied October 30, 1891, (opinion filed December 30, 1891), on the ground that relator should have anticipated the organization of Dickinson county and made an apportionment accordingly, and suggesting that such an apportionment be made.

The case involved the question as to whether the act organizing Dickinson county received the vote of a majority of the members-elect of the senate, and the validity of certain proceedings unseating a senator and seating one who voted in favor of the act in question. Dickinson county was allowed to intervene and file an answer.

1313 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Monroe), 36 M., 70.

To compel respondents to raise a State tax to refund to the State a balance struck against the county, which includes, among other things, a loss on tax lands sold for less than their cost, and also the amount of certain taxes, the collection of which was stayed by injunction.

Denied April 4, 1877.

1314 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Saginaw), 62 M., 579.

To compel respondent to apportion a sum claimed to be due the state among the several townships.

Denied October 7, 1886.

The auditor-general charged the county with the differences between the sums for which certain parcels of land were sold under Act No. 169, Sec. 124, Laws of 1869, and the amount for which they were bid in by the State prior to the taking effect of the law of 1869.

Held, that said Act was prospective only, and that the county should be credited with the sums illegally charged against it.

**1315 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Jackson),
24 M., 237.**

To compel respondent to apportion upon the taxable property in the county, a sum claimed to be due from the county to the state.

Granted January 4, 1872.

**1316 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Grand
Traverse), 73 M., 182.**

To compel respondents to levy a tax for the amount due the State from said county.

Granted January 11, 1889.

The board insisted upon its right to set off a sum claimed by it to be due from the State.

Held, that a set-off is in its nature in assumpsit, and the right to make it is only an irregular form of action against the State.

**1317 ATTORNEY GENERAL vs. WHITE (Supervisor) AND GER-
BER (Treasurer), Sheridan Township, No. 13952.**

**1318 ATTORNEY GENERAL vs. FINNEY (Supervisor) AND MAR-
SHALL (Treasurer), Dayton Township, No. 13953.**

To compel the levy and collection of the State and county taxes as apportioned to said townships by the board of supervisors of the county (Newaygo), the supervisor in each case refusing to act on the ground that the equalization was inequitable.

Granted January 17, 1894.

It appeared that no State and county taxes had been levied and that certain of the taxpayers had paid the other taxes, and the writ provided that such persons should pay but one per cent as collection fees and all others three per cent on the new assessment. The court entertained jurisdiction because the Circuit

Court was not in session, and in view of the exigencies of the matter.

1319 ATTORNEY GENERAL vs. BOARD OF ASSESSORS (Grand Rapids), No. 15199; 2 D. L. N., 636; 65 N. W., 2.

To compel respondent to proceed and spread the State and other taxes in accordance with the provisions of the City Charter as amended in 1895.

Granted November 26, 1895.

1320 BOARD OF SUPERVISORS (Cheboygan) vs. SUPERVISOR (Mentor) ET AL., No. 13177.

1321 BOARD OF SUPERVISORS (Cheboygan) vs. SUPERVISOR (Nunda), No. 13178.

1322 BOARD OF SUPERVISORS (Cheboygan) vs. SUPERVISOR (Tuscorora), No. 13179, 94 M., 386.

To compel respondents to spread upon the assessment rolls of their several townships the county taxes, as apportioned for 1891.

Granted in part December 13, 1892, without costs.

Opinion filed December 23, 1892.

1. The writ of mandamus is a discretionary writ, and will not be granted to accomplish a confessedly illegal purpose, even though the officer against whom it is invoked is charged with an express duty under the statute; citing Common Council vs. Schlich, 81 M., 405.

2. A writ of mandamus will not be granted to compel a supervisor to spread upon his roll that portion of the county tax

certified to him which, while purporting to have been voted for the purpose of a poor farm, is really being raised to aid in securing a location for a tannery in the county.

Inasmuch as there was no difficulty in separating the fraudulent tax from the other taxes, writs were issued, directing respondents to spread said balance upon their respective rolls.

1323 AUDITOR GENERAL vs. BOARD OF SUPERVISORS AND COUNTY TREASURER (Bay), No. 13845, 106 M., 662.

To compel respondent to collect and pay to the State certain moneys due the State from said county.

Order to show cause granted November 14, 1893.

Issues settled December, 1893, and sent to Ingham for trial.

Granted October 10, 1895, without costs.

1324 AUDITOR GENERAL vs. BOARD OF SUPERVISORS (Midland), No. 11385, 84 M., 121.

To compel respondent to apportion the amount of an indebtedness claimed to be due the State.

Denied December 24, 1890.

Held, that losses arising from the sale of the "five year list," under the Tax Law of 1869, are improper charges against the counties; that their collection cannot be enforced, and that the claimed settlements do not show such an accounting as should estop the county from asking that the charges for such losses should be stricken from the account. Held, further, that where an application for the writ is heard upon petition and answer, the facts stated in the answer must be taken as true.

1325 BOARD OF SUPERVISORS (Bay) vs. BOARD OF SUPERVISORS (Arenac), No. 15413½.

To compel the respondent board to levy a tax to raise an

amount sufficient to refund State taxes paid by Bay County, which should have been paid by Arenac County, but which were apportioned to Bay after the organization of Arenac.

Order to show cause denied February 18, 1896, on the ground that the application should have been made to the Circuit Court.

1326 BOARD OF SUPERVISORS (Bay) vs. BOARD OF SUPERVISORS (Arenac), No. 15669, 3 D. L. N., 601. (Certiorari to Bay.)

To compel respondent to raise by tax amounts apportioned to Bay County for State taxes, and which were paid by that county, but which should have been paid by Arenac.

The circuit judge denied the writ. Affirmed December 9, 1896, with costs.

Held, that where money has been paid by one county to the use of another, mandamus will not lie.

1327 HIGGINS TOWNSHIP vs. BOARD OF SUPERVISORS (Midland), 52 M., 16.

To compel provision for payment of a balance due on settlement of accounts.

Granted October 31, 1883.

Held, that in showing cause in such case record issues should be set forth as they stand.

1328 ROSCOMMON TOWNSHIP vs. BOARD OF SUPERVISORS (Midland), 49 M., 454.

To compel respondent to provide for the payment of a balance remaining due on the books of Midland County in favor of relator township, which was formerly one of the towns of Midland County, but is now in Roscommon County, which latter county was organized in 1875.

Granted October 31, 1882.

The return admitted that the balance stood on the books, but denied the liability on the grounds that neither the claim nor the books were correct; that the county had not received all the taxes returned as delinquent; that a large amount of taxes had been charged back, and that a large amount was enjoined and never collected, and these had never been adjusted between the county and the township, but the answer contained no statement of definite items reducing the balances, though the means of doing so, if they existed at all, were accessible to the board.

Held, that this answer showed no cause against the writ; that Comp. L., Chap. 226, related to cases where the writ had been first issued, and the return made under which issues of fact are framed, a practice which is not customary here. The writ is meant to be a speedy, summary remedy, the chief value of which would be destroyed by the delays and complications of special pleading authorized under the practice of alternative or double writs. The proceedings are begun by an order to show cause, and such issues of fact as are introduced by or under the return, are disposed of specifically, not by sending down the entire case on the record, but in the same way as are particular issues sent down in chancery cases to be disposed of.

1329 TURCK (County Treasurer) vs. WRIGHT (Supervisor, Pine River Twp.), 19 M., 350.

To compel respondent to spread the amount of an alleged indebtedness to the county from the township, upon the assessment roll.

Denied October 26, 1869, on the ground that boards of supervisors have no general power to establish claims in favor of counties against townships, and there was nothing in the papers showing that this claim was within their jurisdiction.

1330 HART TOWNSHIP vs. COUNTY OF OCEANA, 44 M., 417.

A county has a statutory right of action upon a township treasurer's bond for moneys which have been paid into the county treasury, and have been embezzled by that officer, but it can enforce by mandamus against township authorities its statutory right to have the amount of taxes re-assessed against the township.

Decided October 20, 1880.

1331 ATTORNEY GENERAL vs. BOARD OF SUPERVISORS (St. Clair), 30 M., 387.

To compel the board to spread upon the tax rolls of their county a sum lost by the State, in consequence of the failure of the late treasurer to account for the moneys received at the regular tax sales for the year 1865.

Granted October 13, 1874.

Held, that the county treasurer, in conducting tax sales is not acting as agent of the State in such a sense as to put his action in that regard outside his official duties as treasurer, and thereby make the loss by his default that of the State, and that the State has lost nothing by laches, applying the rule laid down in *Detroit vs. Weber*, 26 M., 284.

The court declined to order the board to re-convene for the purpose, holding that the alternative remedy open to the State to charge the amount over was preferable.

1332 OCEANA COUNTY vs. HART TOWNSHIP, 48 M., 319.

To compel respondent to levy and collect an amount of money not accounted for by a defaulting treasurer.

Granted April 25, 1888.

1333 SOLDIERS' RELIEF COMMISSION vs. BOARD OF SUPERVISORS (Kalkaska), No. 15910.

To compel respondent to levy a tax for the purposes of said commission.

Granted November 20, 1896.

1334 GALE vs. SUPERVISOR (Onondaga), 16 M., 253.

To compel the supervisor to levy a tax for the payment of a note, which had been signed by relator and others, for bounties, in anticipation of the ratification thereof by the proper authorities.

Denied November 2, 1867.

An informal meeting was held at which it was agreed that such note should be issued. At an annual meeting subsequently held a tax was ordered spread to pay said note; the tax was levied and a part collected, but the township board directed the treasurer to refund the amounts so collected. Subsequently an act of the legislature directed the levy of a tax to pay said note, but at the annual meeting subsequently held the supervisor was directed to disregard the provisions of said act.

Held, that townships have no general power to adopt any unauthorized liabilities or to audit accounts by town meetings, and that the act of the legislature was equivalent to the audit of a private claim, which is forbidden by the constitution.

1335 HENDERSON vs. DARLING (Supervisor Woodstock Township), No. 12608.

To compel respondent to spread certain taxes upon the assessment rolls.

A peremptory writ was issued March 1, 1892, upon failure to answer.

It was afterwards made to appear that the order was issued too late to enable the respondent to comply, and an order was

made directing respondent to hand over the order to his successor in office.

1336 HUBBELL vs. ROBERTSON (Supervisor Clay Township), 65 M., 538.

To compel respondent to levy a tax to pay orders drawn by a drain commissioner, in a case where the work for which the orders were drawn, was ordered by the joint action of different township commissioners.

Denied April 28, 1887.

Held, that there is no statute which allows joint action by different townships in the construction of drains through them, citing Alger vs. Slaight, 64 M., 589.

1337 ZINK (Drain Commissioner) vs. BOARD OF SUPERVISORS (Monroe), 68 M., 283.

To compel the respondent board to convene and include within the assessment of a drain tax two items, one of \$70, for the fees of attorneys employed by the drain commissioner to assist him, and another of \$72 for the services of two other persons employed by him.

Denied January 19, 1888.

1338 HENDERSON vs. DARLING (Supervisor Township of Woodstock), No. 12076.

To compel respondent to spread upon the assessment roll, certain drain taxes.

Order to show cause granted June 18, 1891.

On November 12, 1891, relator moved for a peremptory writ for default in not answering.

Granted Nov. 13, 1891, with costs.

1339 HENDERSON vs. DARLING (Supervisor Township of Woodstock), No. 13094.

To compel respondent to spread upon the roll certain drain taxes.

Granted October 26, 1892, with costs.

The tax was for cleaning out a drain, and the defense was that the proceedings to lay the drain were void, but no question had been raised relative to the original proceedings, and all had acquiesced therein. Held no defense.

1340 SNYDER vs. SUPERVISORS OF TOWNSHIPS OF ATTICA, ARCADIA, BURNSIDE AND GOODLAND, No. 15969.

To compel respondents to spread upon the tax rolls of their several townships a drain tax ordered spread by the board of supervisors, but which respondents refuse to spread because they deem it illegal.

Peremptory writ granted December 9, 1896, on application for certiorari to Lapeer.

1341 BROWNELL vs. BOARD OF SUPERVISORS (Gratiot), 49 M., 414.

To compel respondents to provide for the assessment and collection of a sum sufficient to pay certain ditch orders, issued in 1871, '72 and '73 by a drain commissioner.

Denied October 31, 1882.

The answer alleged that respondent had no knowledge as to whether relator was holder or owner of the orders. Held, a proper answer; that mandamus proceedings by a person not entitled to payment would not bar a subsequent action by the rightful owner, and that the title of the relator must therefore be admitted or proved for respondent's protection. See *Loomis vs. Township Board*, 53 M., 135 (1349).

Held, also, that a purchaser of State lands, who had had the ditch taxes thereon vacated, would not be granted the discretion-

ary writ of mandamus to compel payment of ditch orders in his possession, nor would such writ be granted to one holding such orders under him.

1342 MASON (County Treasurer) vs. SUPERVISOR (Hazelton Township), 82 M., 440.

To compel respondent to spread certain drain taxes upon the assessment roll of his township.

Granted October 10, 1890.

Held, that the township is liable to the county for drain taxes assessed under the township drain law (Act No. 39, Laws of 1869) and charged back to the county by the auditor-general on their being declared void by the court, where it has had the benefit, not only of the credit for such taxes on its settlement with the county, but of the money which it has disbursed, and the township is also liable for the interest legally chargeable to the county on said taxes.

1343 MASON (County Treasurer) vs. SUPERVISOR (New Haven Township), 82 M., 435.

To compel respondent to spread certain drain taxes upon the assessment roll of his township.

Denied October 10, 1890.

Held, that where under the county drain law (Act No. 43, Laws of 1869), the drain taxes had been spread and attempt made to collect the same, and the amounts collected paid to the county treasurer, and the lands upon which they are not collected returned to that officer, and afterwards the drain taxes returned are declared void, and are charged back to the county by the auditor-general, the board of supervisors have no power to charge such rejected taxes to the township from which they were returned or to order its supervisor to spread them upon his roll.

1344 SCHOOL DISTRICT NO. ONE (Portage) vs. RYAN (Supervisor, Adams), 19 M., 203.

To compel respondent to levy a tax for the payment of ~~certain~~ bonds issued by School District No. 1, prior to the formation of the township of Adams out of territory formerly within School District No. 1.

Denied October 12, 1869.

Held, that the creation and organization of a new township severs its territory from the school district within which it was formerly embraced, and there is no general provision of law which charges the property within the new township with the obligation to pay any debts created for school purposes which existed at the time of the creation of the new township.

1345 BOARD OF SUPERVISORS (Cass), vs. TOWNSHIPS OF PORTER AND CALVIN, 18 M., 101.

To compel respondents to levy in the tax roll for 1868, such sums as are required to pay principal and interest on certain county bonds alleged to have been lent to the towns upon the condition, afterwards sanctioned by the legislature, that the towns should have the amount apportioned to them as their share of county taxes.

The court held, that "technically the writ cannot issue precisely as prayed, inasmuch as the roll for 1868 has run out. The law, however, seems to contemplate that a special roll may be made for the collection of these taxes. But we have thought it best under all the circumstances, not to require this unusual step to be taken, but to leave the matter to be provided for in the taxes of 1869. We shall, therefore, suspend action on the writ at present, without costs to either party, leaving the proceedings open, and not dismissing them."

**1346 FIRST NATIONAL BANK vs. SUPERVISOR (Pickford),
No. 13810.**

To compel respondent to include in the tax-roll an amount sufficient to pay three years' interest upon ten bonds of \$1,000 each, issued by the township, in a case where the answer set forth that the township had been divided since the issue of the bonds, and that a levy of the entire amount in one year would seriously distress the taxpayers.

Granted November 15, 1893, directing the levy of sufficient to pay one year's interest.

The court entertained the petition because it appeared that the circuit judge was a stockholder in the petitioning bank.

**1347 WAYNE COUNTY SAVINGS BANK vs. SUPERVISOR (Nester),
No. 13812.**

To compel assessment of a sufficient sum to pay the interest and principal of certain township bonds.

Granted November 15, 1893.

The petition showed, that the Circuit Court had not been in session since September, and would not be until after January 1, 1894.

1348 WAYNE COUNTY SAVINGS BANK vs. SUPERVISOR (Roscommon), No. 13118.

To compel assessment of certain sum to pay township bonds.

Granted November 16, 1892, with costs.

1349 LOOMIS vs. TOWNSHIP BOARD OF ROGERS, 53 M., 135.

To compel respondent to include the amount of a certain bond and interest coupon in a tax levy.

Denied March 6, 1884.

Held, (1) that the facts set up by respondent in his return to

an order to show cause, are admitted by the relator if when an issue is framed they are not submitted to the jury; (2) that How. Stat., Sec. 8666, in providing that a peremptory mandamus shall be granted at once, where a verdict is found for relator, does not apply if material issues have not been submitted to the jury and found in his favor; (3) that mandamus does not lie to compel a township to raise money to pay bonds so long as it is an open question whether the bonds are a legal obligation on the township, and whether the relator is a bona fide holder of them, as these are questions for the trial court, *Brownell vs. Supervisors*, 49 M., 414 (1341).

1350 WAYNE COUNTY SAVINGS BANK vs. SUPERVISOR (Roscommon Township), No. 13811, 97 M., 630.

To compel the assessment of an amount sufficient to pay interest and principal on certain township bonds, it appearing that an assessment had been made in 1892, in conformity with the mandate of this court, for the interest and principal on bonds then matured, but that the entire amount of the levy had not been collected and relator asks that the unpaid balance be included in the new assessment, with other sums for interest and principal since maturing.

Granted as to the since accruing interest and since maturing principal, but denied as to amount embraced in the former assessment, November 15, 1893.

The court entertained the application because the Circuit Court had not been in session since September, and would not be until after January 1, 1894.

1351 BOARD OF WATER COMMISSIONERS (E. Saginaw), vs. COMMON COUNCIL (E. Saginaw), 33 M., 164.

To compel respondent to include in the tax levy an amount sufficient to meet certain bonds which are about to mature.

Denied January 5, 1876.

Held, that, as a general rule, the council should be allowed to determine what taxes ought to be levied for city purposes, and there ought to be no interference with its discretion by the courts, except for the most imperative reasons; that where the respondent appears to have acted in good faith, and the question at issue is one more of policy than of right or power, and it is not made to appear that any serious evils will result, the court may justly exercise its discretion and abstain from interference; and that inasmuch as the commissioners are expressly authorized to meet the bonds by issuing new bonds, the application is denied.

Held also, that the board of water commissioners has such an interest, not common to all citizens as authorized the application, although the bondholders have a remedy against the city in case the bonds are not met at maturity.

1352 OWEN vs. BOARD OF SUPERVISORS (Clinton), No. 15201½.

To compel the respondents to direct the supervisor of the township of Eagle to spread upon the tax roll a sum sufficient to pay certain township orders.

Order to show cause denied November 5, 1895, as the application should be made to the Circuit Court.

1353 SCHOOL DISTRICT NO. ONE vs. RYAN (Supervisor, Adams), 17 M., 159.

To compel the levy and assessment of certain school taxes.

The return set forth that respondent was ignorant as to the truth of certain material allegations in the petition, and that therefore he could neither admit nor deny the same. The relator, deeming such return unsatisfactory and evasive, moved for a further return, for the reason that no issue could be based on the return made, as it did not deny the facts averred.

Held, that a party could not be compelled under oath to admit or deny what he has no means of knowing with certainty.

An issue was framed and the case was sent down to the circuit for the trial of such issue.

Decided July 8, 1868.

1354 WHEELER ET AL. (School Dist. Officers) vs. LOGAN (Supervisor, Seney Township), No. 12376.

To compel assessment of taxes for school purposes.

Granted in the alternative November 18, 1891.

1355 TURNBULL vs. BOARD OF EDUCATION (Alpena), 45 M., 496.

To compel respondent to provide for the payment of certain orders issued by a school district before the division of the district, in a case where the statutory provisions for distributing the original liability had not been strictly observed.

Granted January 28, 1881.

Interest upon such orders was denied, as no authority had been given to impose it, and as the case involved new questions, costs were denied.

1356 UNION SCHOOL DISTRICT (Rogers) vs. PARRIS (Supervisor), No. 13843½, 97 M., 593.

To compel respondent to spread certain school taxes upon his roll.

Granted November 28, 1893, without costs.

1357 PRINGLE vs. SUPERVISOR (Summerfield), No. 14481½.

To compel respondent to include in the tax roll of School District No. 3, of said township, an amount sufficient to pay an order

issued by said district, it appearing that said school district "has been disorganized."

Order to show cause denied October 30, 1894.

**1358 WAYNE COUNTY SAVINGS BANK vs. SUPERVISOR (Nester),
14437½.**

To compel respondent to levy on the taxable property of a given school district for the year 1894, a sufficient sum to pay the interest due upon certain bonds issued by said school district.

Order to show cause denied October 30, 1894, on the ground that the application should be made to the Circuit Court.

**1359 BOARD OF EDUCATION (Detroit) vs. COMMON COUNCIL,
80 M., 548.**

To compel respondent to levy a certain sum for free text books.
Denied May 9, 1890.

Held, that the inclusion by the board of education in its annual estimate of a sum for free text books, in the absence of authority from a majority of the qualified electors, as provided by Section 6, Act No. 147, Laws of 1889, is absolutely void, and the writ will not be issued to aid in the enforcement of an illegal claim.

1360 TINSMAN (County Drain Comr.) vs. BOARD OF SUPERVISORS (Monroe), No. 12511, 90 M., 382.

To compel the spreading of certain drain taxes.
Denied March 3, 1892, without costs.

1361 POST (County Drain Comr.) vs. HARRIS (Supervisor, Township of Leroy), No. 13255, 95 M., 321.

To compel respondent to spread a drain tax upon the township assessment roll.

Denied April 21, 1893, with costs, on the ground that the board of supervisors had not directed the levy under 3 How. Stat., Sec. 1740-f4.

1362 NUGENT (County Drain Commissioner) vs. ERB (Supervisor, Township of Chandler), No. 12480, 90 M., 278.

To compel assessment of drain tax.

Denied February 3, 1892.

Held, that the order of the commissioner determining the practicability of the proposed drain is fatally defective.

1363 CONELY (County Drain Commissioner) vs. BOARD OF SUPERVISORS (St. Clair), No. 12348½.

To compel spreading of assessment for construction of drain upon township tax rolls.

Order to show cause denied November 11, 1891.

At a session of the board in October, 1891, that body refused to order the assessment because the papers relating to said drain had not been filed in the office of the township clerk of said township, nor with the county clerk.

1364 BUTLER vs. BOARD OF SUPERVISORS (Saginaw), 26 M., 21.

To compel respondent to levy a tax to pay certain drain orders held by relator.

Denied 1872.

The orders were issued for the construction of various drains. The petition is general and does not separate them or show what fund the orders were drawn against, or what ditches they had reference to.

Held, that relator, under such petition, assumes the burden of showing that the supervisors should have levied the tax for all

the drains; and if insuperable objections exist to a tax for one out of all, the writ must be denied. A petition for mandamus must show a clear legal duty resting upon the persons or tribunal against whom the remedy is sought, which they refuse, on request, to perform; and it does not show this, if the request embraces anything which it would be illegal for them to do

1365 EAST JORDON LUMBER COMPANY vs. EAST JORDON VILLAGE, No. 13096, 100 M., 201.

To compel respondent to levy a tax sufficient to pay the claim of relator, under a contract to furnish a water supply.

On coming in of the answer, issues were framed and sent down for trial.

Granted May 18, 1894, with costs.

An objection that the prayer of a petition for mandamus to compel a village, incorporated under the general village incorporation act, to levy a tax sufficient to pay the amount due on a contract to furnish a water supply for the prevention of fires, is not sufficiently definite, in that it is not ascertainable from said prayer whether a special or a general assessment is asked for, is untenable, as the court can and will direct, as to the nature of the assessment, if a mandamus is granted.

On October 23, 1894, relator filed a petition praying that the members of said village council might be adjudged guilty of contempt for not complying with the order. Relator filed an answer Nov. 16, 1894, setting forth that they had adopted a resolution November 12, 1894, directing the assessor to spread the taxes and that relator's representative had expressed himself entirely satisfied with the action taken.

1366 HOSIER vs. TOWNSHIP BOARD (Higgins), 45 M., 340.

To compel the raising of a tax to pay certain highway orders.
Granted in part January 19, 1881.

Held, that certain of the orders, which were issued for the building of a bridge, were issued without authority, and the application was denied as to such orders; that inasmuch as it did not affirmatively appear that the highway commissioners were authorized to issue certain of the orders, it must be assumed that no authority existed; that in a mandamus proceeding, to enforce the payment of money, as in any other, the claimant must make out his own case, unless it is admitted expressly or by implication; the burden is not on the respondent to show that the judgment is illegal.

The court has plenary jurisdiction in mandamus and will grant relief where a case is made out in part, even if it fails in other respects.

1367 PACK vs. BOARD OF SUPERVISORS (Presque Isle), 36 M., 377.

To compel provision by taxation to pay certain warrants alleged to have been issued by order of the board.

Denied April 24, 1877.

The answer set forth that the warrants were issued without authority to a party having notice, and for a purpose which was illegal.

Held, that mandamus will not issue to enforce doubtful rights, and the matter having been heard upon petition and answer, the answer is conclusive.

1368 COMMISSIONER OF HIGHWAYS (Garfield) vs. SUPERVISOR (Springfield), 77 M., 228.

To compel assessment of taxes to pay judgment recovered against the commissioner of highways of the township of Springfield.

Denied November 1, 1889.

Held, that the justice before whom the judgment was recovered, had no jurisdiction, and the judgment was a nullity.

1369 McDONALD (Supervisor) vs. SHEPHERD (Supervisor),
No. 14444½.

To compel respondent supervisor of Mikado township to spread upon the tax roll a sufficient sum to pay a judgment recovered by Greenbush township against Mikado township.

Order to show cause denied, October 2, 1894, on the ground that the application should be made to the Circuit Court.

1370 WOOD (Assessor School Dist.) vs. KILLMASTER (Supervisor,
Township of Gustin), No. 13157.

To compel respondent to place the amount of a certain judgment recovered against relator's district upon the tax roll.

Alternative writ granted November 15, 1892.

1371 WOOD vs. KILLMASTER (Supervisor), No. 13557.

Relator filed a petition, showing that the order entered in the preceding case had not been complied with, and a peremptory mandate was issued June 14, 1893, in default of answer, with costs, directing respondent to comply forthwith.

1372 SHIPPEY vs. SUPERVISORS (City of Au Sable), No. 12361,
90 M., 45.

To compel assessment of the amount of a certain judgment.

Denied January 22, 1892, with costs to relator, on the ground that it is too late to issue the writ for any effect upon the tax roll of 1891, but held, that relator was entitled to have the tax spread upon the roll for 1892.

1373 HAINES vs. BOARD OF SUPERVISORS (Saginaw), No. 11754.

To compel respondent to allow to a township a certain credit and to provide for its payment.

Denied February 10, 1891, but petitioner allowed to withdraw petition and fortify same with certified copies of records.

1374 HAINES vs. BOARD OF SUPERVISORS (Saginaw), No. 11997; 87 M., 237; 99 M., 32.

To compel respondent to allow to a township a certain credit and to provide for its payment.

Order to show cause granted March 13, 1891. Issues settled and remanded for trial July 28, 1891.

Writ granted February 12, 1894, with costs.

Held, a proper case for reference by the Circuit Court to a referee, under How. Stat., Sec. 7378.

1375 WHITLEY vs. COMMON COUNCIL (Lansing), 27 M., 131.

1376 FRENCH vs. COMMON COUNCIL (Lansing), 30 M., 377.

1377 DAVIS vs. COMMON COUNCIL (Lansing), 31 M., 489.

To compel the assessment of a sufficient sum to pay for amounts claimed to be due under a grading contract, upon orders issued on the engineer's estimates as the work progressed. An assessment was made which was held invalid. By Act No. 338, Laws of 1869, a reassessment was provided for to pay for the improvement, but the act required a re-survey and a re-estimate of the amount of the excavation and provided for payment for the work, upon the basis of the new estimates. The answer in the first case averred that the original estimates were incorrect, but the court held that the estimates under the act of 1869 did not bind the contractor, reserved the question as to the conclusiveness of the original estimates, and ordered an issue to be framed and

sent down for trial by jury to determine the exact amount of work done under the contract, the amount of orders issued and the difference, if any, between the sum earned and that included in the orders.

In the second case the further question was raised that the provision of the act of 1869 superceded the charter provision for re-assessment, and there was, therefore, no authority for such re-assessment.

In the third case no answer was made, and it was held to be ruled by the French case.

Writ granted in each case.

1378 CICOTTE vs. COUNTY OF WAYNE, 59 M., 509.

Mandamus will lie to compel the board of auditors to give parties a fair hearing, where they refuse to do so, and to allow claims which are for amounts that are not open to reduction, but there is no authority for revising any action of the board had without wrong in the course of its official discretion. Kuhn vs. Co. Auditors, 10 M., 307 (1524); Mixer vs. Supervisors, 26 M., 422 (1379); Videto vs. Supervisors, 31 M., 116 (1515); Barry Co. vs. Manistee Co., 33 M., 497 (1562); Clark vs. Supervisors, 38 M., 658 (1554).

1379 MIXER vs. BOARD OF SUPERVISORS (Manistee), 26 M., 421.

To obtain the audit and allowance of certain claims.

Granted January 17, 1873.

The constitutional provision prohibiting appeals from the supervisors, has not made them independent of the laws in their action. They cannot lawfully allow illegal claims nor refuse to allow legal claims at the amount fixed by law, where the legislature has power to fix the amount. They are bound to consider all claims against the county lawfully presented, and to give the

claimant an opportunity of presenting his case and proofs, and to allow for all services, legally and properly rendered, the amount fixed by law, or if no amount is fixed, then such sums as they are reasonably worth. A mandamus will not lie to control their action when they have only used their lawful discretion, and have not refused to consider a claim which they were bound to determine. They are bound in all cases, when claims are presented, to act promptly in hearing or refusing to hear them, and to put their whole action on record, so as to enable the claimant, in case of rejection, to have his rights determined by the courts.

1380 COOK vs. BOARD OF SUPERVISORS (Presque Isle), No. 13952½.

To compel the audit and payment of a certain claim.

Order to show cause denied January 2, 1894, on the ground that the application should be made to the Circuit Court.

1381 CHAPIN vs. BOARD OF SUPERVISORS (Macomb), No. 14876½.

To compel the allowance and payment of a certain claim.

Order to show cause denied April 30, 1895, on the ground that the application should be made to the Circuit Court.

1382 GARDNER vs. BOARD OF SUPERVISORS (Newaygo), No. 15244½; 3 D. L. N., 323; 67 N. W., 1091.

To compel the audit of certain claims.

Order to show cause denied November 19, 1895, on the ground that application should be made to the Circuit Court.

1383 JENNEY vs. HOLLAND (Twp. Treasurer), No. 13548½.

To compel the payment of certain orders.

Order to show cause denied June 6, 1893, on the ground that the application should be made to the Circuit Court.

1384 REEDER (Township Treasurer) vs. COUNTY TREASURER (Wexford), 37 M., 351.

To compel payment over of certain moneys due the township. Granted October 16, 1877.

Held that mandamus proceedings against an official as such, are not affected by a change of incumbency; that the relator is not usually granted greater relief than the claim made in his application, and that interest is not usually allowed in the absence of a statute or contract relation calling for it.

1385 MARLETTE TOWNSHIP vs. SMITH (County Treasurer), No. 12346.

To compel respondent to correct statement of account and pay over certain moneys. Certain taxes were charged by the auditor-general to Sanilac County, and the board of supervisors of that county ordered the same to be re-assessed upon the township of Marlette. The township declined to make the assessment, and in the statement rendered by that county the amount stands charged against the township.

Denied November 19, 1891, without costs.

1386 GIES (Treasurer, Wayne County) vs. CONTROLLER (Detroit), 18 M., 444.

To compel respondent to draw his warrant upon the city treasurer in favor of relator, for all moneys remaining in said treasurer's hands received for fines and penalties in the Central Police Station Court of the city of Detroit.

Granted May 10, 1869.

1387 FENNEL (Co. Treasurer) vs. COMMON COUNCIL (Bay City),
36 M., 185.

To compel the city authorities to pay over such funds as have been paid into their treasury upon fines collected for violation of city by-laws on prosecution before the recorder.

Denied, with costs, April 10, 1877.

1388 CITY OF DETROIT vs. BOARD OF AUDITORS (Wayne),
No. 15330.

To compel payment over to relator of certain fines and costs, collected in the Police Court for violation of the city ordinances.

The circuit judge granted the writ as to the costs. Affirmed March 3, 1896, with costs.

A written opinion was filed by the circuit judge which is as follows:

Lillibridge, Circuit Judge. This is an application for a writ of mandamus to compel the respondents to pay to the City of Detroit the sum of four thousand, four hundred and sixteen dollars (\$4,416) for fines, and nine thousand, five hundred and forty-five and 51-100 dollars (\$9,545.51) for costs collected in the Police Court of the City of Detroit for violation of the city ordinances since July 5th, 1892.

The law requires the clerk of the Police Court to pay to the county treasurer all fines and costs collected in said court for violation of the general state laws, and also to pay to the city treasurer of Detroit all fines and costs collected for violation of the city ordinances.

The statute (Howell's, Sec. 5146) also provides that the county treasurer, on or before the first day of June in each year, shall apportion and distribute the amount of the fines so received by him among the several townships of the county for the support and maintenance of free public libraries. The statute makes no provision for the distribution of the costs received by the county treasurer; but they are permitted to be used for the general expense of the county.

Acting under the law, above referred to, the clerk of the Police Court of Detroit has, from day to day since July 5th, 1892, paid to the county treasurer of this county various sums of money, as the proceeds of fines and costs, to which the said county treasurer was entitled under the law above referred to, and the said county treasurer, acting in pursuance of the statute above referred to, has each year, before the 1st of June, apportioned and distributed the amount of all said fines among the various townships for the support and maintenance of free public libraries.

Now, however, it is discovered that the clerk of the Police Court

has all the time paid to the county treasurer not only the fines and costs collected for violation of the general state laws; but along with them has also paid the fines and costs received for violation of the city ordinances, to which the city treasurer was of right entitled, and that the county treasurer has apportioned and distributed all of the fines so received among the various townships and libraries, and has none of it on hand at the present time.

In other words, by a mistake the clerk of the Police Court has paid to the county treasurer, since July, 1892, as moneys to which he was entitled under the law referred to, fines and costs collected for violation of city ordinances, which should have been paid to the city treasurer, and the county treasurer has distributed it, and the question is whether the respondent can now be required to repay the amount so received to the city treasurer.

It is not claimed that the county treasurer has any knowledge, or information, that any portion of the funds so received were collected for violation of city ordinances; but on the contrary he received them in perfect good faith and distributed them as, by law, he was required to do.

The general rule is that money paid under a mistake of material facts may be recovered back, although there was negligence on the part of the person making the payment; but this rule is subject to the qualification, that the payment cannot be recalled when the situation of the party receiving the money has been changed in consequence of the payment; and it would be inequitable to allow a recovery. The person making the payment must in that case bear the loss occasioned by his own negligence. *Walker vs. Conant*, 65 M., 194; *Walker vs. Conant*, 69 M., 321; *Mayer vs. Mayer, etc.*, 63 N. Y., 457; *Union Bank vs. Sixth Nat'l Bank*, 43 N. Y., 453.

The mere fact that the person receiving the money has paid it out or used it, when he received a benefit from it does not excuse a re-payment. *Byles vs. Golden Township*, 52 M., 614; *Decatur vs. Township Board of Decatur*, 33 M., 335.

But if the position of the person receiving the money has been changed, without fault on his part, either as to a part or the whole of the fund, so that it would be inequitable to allow a recovery, in that case re-payment will not be required. *Byles vs. Golden Township*, 52 M., 614.

Applying these rules to this case, if the respondent still had these moneys on hand, or even having paid them out had it received some benefit from them, as by paying general expenses of the county or for any other purpose from which the county received benefit, then undoubtedly the relator would be entitled to recover; but the fact is undisputed as to the fines they have all been apportioned and distributed as the law directs and the respondent has received no benefit from them. They were, in no sense, funds belonging to the County of Wayne and the county treasurer had no interest in them. He was, under the law, a

mere channel or conduit for receiving the fines and distributing them without retaining one dollar. It was a mere naked trust to receive the moneys and distribute them.

It is impossible that the respondent could recover back the various amounts from the several townships and school districts which have received and expended them. It is clear, therefore, that as to the fines, considered apart from the costs, the situation of the respondent has been materially and essentially changed in consequence of the payment, and without fault on his part, and if it be now compelled to repay the amount it will be without redress.

It is a rule of equity and common sense that when one or two persons must bear a loss he, through whose fault or negligence the loss occurred, must suffer the loss, in the absence of fault or neglect on the part of the other person.

It was contended by counsel for relator that the act of the clerk in paying the money to the county treasurer was unauthorized and illegal and that the relator cannot be bound by the unauthorized and illegal act of one of its officers. Whether this be true or not as an abstract principle of estoppel I do not think the rule applies to this case.

It is, nevertheless, time that the municipality, like any other litigant, must pursue its remedy subject to any equities which may have arisen in behalf of the respondent subsequent to the payment of the money and before the commencement of its suit to recover and where, as in this case, before the beginning of its action to recover, the situation of the respondent has been changed, without fault on its part, by the distribution of the fund, it is only the application of familiar principles of equity to hold the relator not entitled to recover.

Any other rule would make the county treasurer a guarantor for the correctness of the acts of all subordinate officials who pay money to him, and that without limit as to time. It would never be safe for him to divide or distribute funds as required by law lest he should at some time thereafter be called upon to re-pay on account of a mistake of some subordinate official.

As to the costs received, amounting to nine thousand, five hundred and forty-five dollars and fifty-one cents (\$9,545.51), the case stands differently. The statute makes no provision for the distribution of the amount received from costs; but allows it to remain in the possession of the county treasurer to be used for the general purposes of the county. The county treasurer, therefore, has this \$9,545.51 on hand, or he has used it for the general expenses of the county. If it has been paid out it has been used in payment of general expenses for which other moneys would have been paid had these costs not been received. The respondent has had the benefit of it, whereas as to the amount of the fines, as above shown, the respondent has received no benefit whatever.

As to the costs, therefore, the case comes clearly within the rules above quoted. The respondent's position has not been changed to its

disadvantage by the payment of the money and it is right and equitable that it should be required to re-pay.

The writ will, therefore, be granted directing the respondent to re-pay \$9,545.51, received for costs.

1389 CITY OF MUSKEGON vs. SODERBERG (Co. Treas.), No. 15968;
3 D. L. N., 766; 69 N. W., 1116. (Certiorari to Muskegon.)

To compel payment over to the city treasurer of certain delinquent real estate taxes collected by respondent.

The circuit judge granted the writ.

Affirmed February 2, 1897, with costs.

The respondent claimed the right to offset the amount due the county for delinquent personal taxes, for which respondent had issued his warrant to the city treasurer to collect.

1390 DAYTON TOWNSHIP vs. ROUNDS, 27 M., 81.

1391 DAYTON TOWNSHIP vs. WARREN, 27 M., 81.

Under the statute (Comp. L., 1871, Sec. 3927-36) authorizing the payment of bounties to volunteers, etc., the bonds provided for are intended to be put upon the footing of established liabilities against the township, to be presented like other claims, for orders on the treasury, to the township board; and an action against the township is not the proper remedy to enforce payment; but the proper redress for any refusal of the town officers to do their duty in this regard is by mandamus.

1392 CONELY vs. MARBLE (County Treasurer, Calhoun), No. 12348.

To compel payment of a loss sustained in October, 1889, by killing of sheep by dogs, under How., Secs. 2123 et seq.

Denied November 18, 1891, with costs.

The common council of the city of Marshall, in April, 1890, directed the recorder to draw an order on the county treasurer in favor of relator for \$105, to be paid out of the dog tax fund. Relator, in April, 1890, filed the order with the treasurer, and as there was not enough in the fund to pay all claims in full, relator received his pro rata share, or \$69.84, together with a certificate showing the total claim and the amount paid thereon. In March, 1891, relator presented this certificate to the county treasurer, and demanded payment of the balance.

Respondent contended that the pro rata payment operated as a full payment, and that the statute authorizing respondent to pay money out of this fund was repealed by Act No. 141, Laws of 1891.

1393 CITY OF BIG RAPIDS vs. BOARD OF SUPERVISORS (Mecosta), No. 13704, 99 M., 351. (Error to Mecosta.)

To compel respondent to pay a certain sewer tax assessed against county property, consisting of the court house and jail.

The circuit judge denied the writ. Affirmed March 20, 1894, with costs.

Held, that there is no statute authorizing a tax upon the property of the county.

The writ of error was issued in this case prior to the adoption of Supreme Court Rule No. 12 (old Rule No. 65), which provides for the review of such an order by certiorari.

1394 COLBY vs. TOWNSHIP BOARD (Woodhull), 14 M., 27.

To compel allowance of claim under Laws of 1865, p. 271, providing for the payment of bounties to volunteers.

Denied November 11, 1865.

Held, that the act only authorized the refunding of moneys raised, advanced or contributed for certain purposes, and that the petition did not bring the claim presented within the act.

1395 FOWLER vs. BOARD OF SUPERVISORS (Saginaw), No. 11785½.

To compel respondent to pass upon and allow petitioner's claim for the premium on certain policies of insurance.

Order to show cause denied February 24, 1891.

In 1885, respondent instructed the committee on county affairs and the county treasurer to place insurance to the amount of \$80,000 on the court house, and said insurance was accordingly taken out in the name of the county treasurer. The policies expired in 1890, and no action having been taken, the county treasurer ordered a renewal of the insurance. On the same day the committee on public buildings held a meeting and instructed the treasurer to renew the policies for eight days, when a special meeting of the board would be held, but the treasurer declined to do so, stating that he had already renewed the insurance for five years. The board met a few days afterward and ordered insurance to the amount of \$70,000 to be placed elsewhere. Relator afterwards presented his claim for the premium for the full term, the committee reported its disallowance and the board indefinitely postponed action upon the report. The relator claimed that it was the treasurer's right and duty to renew the insurance under How., Sec. 528, and the resolution of 1885, and that the treasurer was the only agency under the statute through which insurance could be secured.

1396 DAVIS vs. BOARD OF SUPERVISORS (Ontonagon), 64 M., 404.

To compel respondent to pay a bonus for building a State road.
Denied January 20, 1887.

By Act No. 19, Session Law of 1879, the counties of Baraga and Ontonagon had been authorized to construct a State road, for which an appropriation of swamp lands had been made. The proposed contractor being unwilling to build the road for the appropriation, the board of supervisors of Ontonagon passed a resolution agreeing that the county should pay the contractor, on

said road, a specified sum per mile in cash as a bonus, on its completion.

Held, that the road was a State enterprise and the bonus voted a mere gift to the contractor, which the board had no power to make.

**1397 MARQUETTE COUNTY vs. DILLON (Treasurer of Ishpeming),
49 M., 244.**

To compel respondent to pay over the moneys collected by him for county taxes for the year 1881, the respondent refusing, on the ground that the county treasurer collected for the previous year an equal or larger sum for taxes collected upon the liquor traffic in the city of Ishpeming, which it was his duty to pay into the city treasury, but which he wrongfully withheld.

Granted October 18, 1882.

Held, that under Act 228 of 1875, in collecting and accounting for the tax, the treasurer is the agent of the municipality and not of the county, and that his failure to act does not warrant the municipality in withholding an equivalent amount from the taxes. Held also, that the county does not guarantee the integrity of its officers, and is not bound to answer for their conduct, as where the county treasurer embezzles funds, which, as the agent of the townships and cities of the county, he is required to place to their credit.

1398 MOILES (School Dist. Assr.) vs. WATSON (Treasurer), 60 M., 415.

To compel payment of a warrant drawn by the proper officers of a school district, for the amount of the primary school interest fund, apportioned by the superintendent of public instruction to said school district, and which had been paid to the respondent by the county treasurer.

Granted April 8, 1886.

It was insisted that relator was not a duly qualified officer, and

that the township clerk had made no apportionment of the fund to the district, under How. Stat., Secs 5088-5089.

Held, that the direction of the payment over of the money was made by the superintendent of public instruction under the statute, and that this direction followed the moneys into the hands of the township treasurer; that no other order or apportionment was necessary, and none can be made by the township clerk. Further, that the person presenting the order was the assessor de facto, and whether he was or not such officer de jure, cannot be determined in this proceeding. *Mead vs. County Treasurer*, 36 M., 416.

1399 STRONG vs. DAVIDSON ET AL. (School Inspectors), 2 Doug., 121.

To compel respondents to pay, or cause to be paid, to School District No. 12, in said township, such sum of money as the district may be entitled to by law from the common school fund and from the fund arising from the taxes of the township.

Denied 1845.

In November, 1842, respondents divided School District No. 4 into two districts, the new district being numbered 12. On the 1st day of December following, the organization of the new district was perfected, but on December 13, respondents made an order dissolving the new district and reannexing it to District No. 4.

The question involved was whether the respondents had power to make the last named order.

1400 MANHATTAN TRUST COMPANY vs. MILLER (City Treas., Ironwood), No. 15012. (Certiorari to Gogebic.)

To compel respondent to pay a certain warrant issued to relator.

The circuit judge granted the writ.

Affirmed November 9, 1895, with costs.

The warrant was payable from the hydrant rental fund, and

while respondent answered that there was no money in that fund, it appeared that he had been directed by the common council to transfer a sufficient amount from the general fund to the hydrant rental fund, and respondent contended that such transfer had not been made.

1401 GEBHARDT ET AL. vs. EAST SAGINAW, 40 M., 336.

Mandamus to compel payment to a contractor from a special assessment, was denied (January 31, 1879) where the assessment had been adjudged invalid in a suit brought by a taxpayer to recover back what he had paid.

1402 MASON vs. TREASURER, MAYOR ET AL. (Gladstone), No. 12727, 93 M., 232.

To compel payment of a certain order issued for a public improvement.

Denied October 4, 1892, with costs.

Relator joined with others in a suit to restrain the collection of the tax, and the tax was declared void, and its collection enjoined, and he now seeks to obtain payment from funds collected from others who paid voluntarily.

1403 SCHOOL DISTRICT NO. 9, OF MIDLAND vs. SCHOOL DISTRICT NO. 5, 40 M., 551. (Assumpsit.)

Mandamus for the payment of money can issue at the instance of one municipal corporation against another only when there are statutory or legal relations between them to authorize it and the obligation to pay has been liquidated. An action for money had and received is the only proceeding by which to liquidate a demand against a municipal corporation for money belonging to the plaintiff and wrongfully in its possession.

1404 CUMMING TOWNSHIP vs. OGEMAW COUNTY, 93 M., 314.
(Error to Ogemaw.)

Assumpsit to recover an amount claimed to be due the township.

Held, that assumpsit and not mandamus is the proper remedy, where no account between the county and the township has been stated and no settlement has been made showing the state of said account.

1405 TALBOT ET AL. vs. MAYOR AND COMMON COUNCIL (Bay City), 71 M., 118.

To compel payment of interest on paving orders, payable out of a particular fund, the principal of which has been paid and accepted and which contained no promise to pay interest.

Denied July 10, 1888.

1406 MICHIGAN PAVING CO. vs. COMMON COUNCIL (Detroit), 34 M., 201.

To compel a city to pay an unliquidated demand.

Denied June 6, 1876.

1407 PETERSON vs. MANISTEE, 36 M., 8.

Assumpsit will not lie against a city upon city orders, where the charter provides that no money shall be drawn from the city treasury unless it shall have been previously appropriated to the purpose for which it shall be drawn, and requires all orders to specify the object and purposes of such payments. The remedy for the improper refusal of payment upon orders properly drawn is mandamus.

1408 SECOND NATIONAL BANK vs. CITY OF LANSING, 25 M., 206.

When there is money belonging to a specific fund to pay orders against it, mandamus is the proper remedy to enforce their payment, but when there is no money belonging to such fund, the remedy must be to supply the deficiency, and in neither case will an action lie against the city on such orders.

Decided July 9, 1872.

1409 McARTHUR vs. TOWNSHIP OF DUNCAN, 34 M., 26.

McArthur brought suit on certain orders drawn by highway commissioners on the township treasurer, who refused payment. The trial court ruled that mandamus was the proper remedy.

Judgment affirmed April 18, 1876.

The court say: "Mandamus and not an action against the township is the proper remedy to enforce payment of orders regularly drawn by highway commissioners; the duty of the township authorities to raise the necessary funds and to make payment is just as imperative upon the presentation of such orders as it would be after judgment against the township."

1410 CATHCART vs. TOWNSHIP TREASURER (Merritt), 38 M., 243.

To compel the payment of certain ditch orders, where there was no money in the fund on which they were drawn and the collection of the assessment had been judicially restrained as illegal.

Denied January 22, 1878.

Held, that such orders are not general township charges, and although the assessment was payable into the town treasury, it still remained a separate fund, and such orders could only be paid out of the particular assessments on the credit of which they were drawn.

1411 JUST vs. TOWNSHIP BOARD (Wise), 42 M., 573.

Mandamus, not assumpsit, lies to compel the township board to pay a valid order given by the highway commissioner on the township treasurer. January 23, 1880.

1412 JUST vs. TOWNSHIP BOARD (Wise), 47 M., 511.

On petition for mandamus to compel payment of highway orders, the parties should frame their issues on the answer, if it denies the validity of the orders. January 18, 1882.

1413 CARRINGTON ET AL. vs. TOWNSHIP BOARD (Cumming), No. 14937.

To compel respondents to issue an order for a balance due upon certain highway and contingent orders which had been surrendered, and to require the supervisor to spread the amount thereof upon the tax roll.

Order to show cause granted June 4, 1895, but proceeding afterwards discontinued by stipulation.

1414 AVERY vs. TOWNSHIP BOARD (Krakow), 73 M., 622.

To compel payment of certain township and highway orders. Denied February 1, 1889.

Held, that an unexplained delay for more than six years to demand or compel payment will bar relief.

1415 OWEN vs. TOWNSHIP BOARD (Lincoln), 41 M., 415.

To compel payment of certain township orders issued more than six years ago, and payment upon which was refused nearly six years ago.

Order to show cause denied July 2, 1879, on the ground of laches.

1416 VILLENNOE vs. WHITMORE (Township Treasurer, Nester), No. 11782.

To compel payment of certain township orders.

Order to show cause issued February 4, 1891.

No answer being made to the order to show cause, a contempt order was issued, and on the return day of contempt order, respondent answered, stating that he had complied with the terms of the order first issued, and was thereupon purged of contempt.

1417 MURPHY (Township Treasurer) vs. TOWNSHIP TREASURER (Reeder), 56 M., 505.

To compel payment of an order of the township board where the treasurer returned that the township had by resolution directed him not to pay, and further, that there were no moneys in his hands with which to pay.

Denied April 29, 1885.

Return to an order to show cause is taken as true if no issue is made upon it.

1418 MACKENZIE vs. TOWNSHIP TREASURER (Baraga), 39 M., 554.

To compel payment of two orders drawn by a commissioner of highways.

Denied, as to one, and granted as to the other, October 31, 1878.

Held, that the proceedings as to the letting of the contract in pursuance of which one order was given did not conform to the statute, and that the contractor was bound to take notice of the statute under which the work was let.

As to the other order, it was held that the contract and order were properly made by one who was performing the duties of the office, although he had not filed an official bond, and that the writ would issue to compel its payment. Costs were denied.

1419 MARATHON TOWNSHIP vs. OREGON TOWNSHIP, 8 M., 371.

Where after the division of a township, the township boards have made and determined the amount of the township indebtedness to be paid by the new township, such amount is a fixed and liquidated demand against such new township, which it is the duty of the township board to allow, and if such board refuses to perform such duty, mandamus to compel its performance is the proper remedy and not assumpsit.

1420 COYLE (Township Treasurer, Greenbush) vs. VENN (Township Treasurer, Mikado), No. 13123.

To compel payment of certain orders, the amount of which was agreed upon at the time of the creation of the respondent township, out of territory formerly included in the township of Greenbush.

Denied November 16, 1892, with costs, but without prejudice.

The answer set up that the respondent township agreed to pay the amount of said orders upon representations made by relator, as to the indebtedness, which were entirely false, and that respondent had been deceived and misled, and further, that there were no funds out of which said orders were payable.

1421 PORTSMOUTH TOWNSHIP vs. BAY CITY, 57 M., 420.

To compel the payment of an indebtedness agreed upon by representatives of both municipalities, but the proceeding to

determine the debt did not clearly appear to be that prescribed by statute.

Denied June 17, 1885.

1422 SCHOOL DISTRICT NO. 3 (Riverside) vs. TOWNSHIP OF RIVERSIDE, 67 M., 404.

To compel payment of moneys claimed to be due relator from respondent.

Denied October 27, 1887.

Held, that mandamus will not be granted to disturb an apportionment made by the township board of school inspectors, between different districts, acquiesced in for several years.

1423 MURPHY vs. TOWNSHIP BOARD (Reeder), 57 M., 419.

To compel payment of a township order.

Granted June 17, 1885.

The order was based upon a settlement, and the answer set forth that a mistake was subsequently discovered which reduced the sum, and the allowance was limited to the amount conceded by the answer to be due, no issue of fact being made, but the allowance was without prejudice.

1424 MALTZ vs. BOARD OF EDUCATION (Wilson), 41 M., 547.

To compel respondent to pay a portion of the orders of a school district, of which it was formerly a part.

Denied October 8, 1879.

Held, that the assignee of school district orders, due from one district to another, cannot enforce their collection by mandamus, but must proceed through his assignor.

1425 HALE vs. TOWNSHIP BOARD (Baldwin), 49 M., 270.

To compel respondent to meet with the township board of Tawas and adjust and apportion an alleged indebtedness growing out of certain bonds issued by Tawas in aid of a plank road company, while the territory now in Baldwin formed a part of Tawas.

Denied October 18, 1882.

1426 SNOW vs. DEAN (Chairman of the Board of Supervisors, Alcona), No. 12624.

To compel respondent to countersign an order directed to be drawn by the board of supervisors in favor of relator.

Order to show cause allowed March 8, 1892.

1427 PRATT ET AL. vs. CROSS (Clerk) **AND HUMPHREY** (Chairman Board of Supervisors), No. 15374.

To compel respondents to sign an order for a sum awarded by the board of supervisors to relators for services rendered in preparing and furnishing plans for a court house. All proceedings in relation to the construction of said court house having been afterwards enjoined.

Granted February 19, 1896, with costs.

Respondents claimed that the injunction restrained them from complying with the demand made by relators.

1428 MCGILLAN vs. SCHONEWEG (Chairman of Board of Supervisors, Baraga), No. 13555.

To compel respondent to sign an order upon the county treasurer for the purchase price of certain lands, which had been deeded to the county for use as a site for a poor farm.

Order to show cause allowed May 31, 1893.

1429 WILHELM ET AL. vs. FAGAN (Supervisor, Holly), No. 11753, 90 M., 6.

To compel respondent to sign a warrant for the purchase of a town hall site, in the absence of a valid, binding contract between relator and the township.

After answer filed the petition was amended, issues were framed and sent to the Oakland circuit for trial, and after trial had, errors were assigned.

Writ denied January 22, 1892, with costs.

1430 GOODMAN vs. O'CONNOR (Supervisor et al., Vernon), No. 12099½.

To compel respondents to draw an order upon the township treasurer for the payment of one of certain bonds issued by said township "for public improvements."

Order to show cause denied July 1, 1891.

1431 GREEN vs. MICHIGAN SOUTHERN RAILWAY CO., 3 M., 496.

To compel respondent to cause to be appraised and paid the damages of the relator, on account of constructing, using and occupying its road upon and across relator's land.

Denied 1855.

The lands were taken and appropriated for the use of the Michigan Southern R. R. Co. in the year 1838, and in 1846 all the right, title and interest of the State in the railroad was transferred to the Michigan Southern R. R. Co.

1432 HOLCOMB vs. TOWNSHIP BOARD (Lowell), 9 M., 144.

To compel respondent board to issue their order for the amount of damages found in favor of relator, in a highway opening case.

Granted January 22, 1861.

The jury found the taking necessary and assessed the damages and their finding was filed in the town clerk's office, but was not certified by the justice, as required by law. The amount of the damages was levied and collected by tax and the road opened.

Held, that the town could not resist the payment of the damages to relator, on the ground that the justice had failed to certify the finding. Held, also, that the township authorities could not refuse to make payment for lands taken for a highway in 1859, on the ground that the road was laid out over the same line in 1857, because there was no law in 1857 under which a highway could be legally laid out through condemnation of the land to be taken therefor.

1433 BALCH ET AL. vs. THE CITY OF DETROIT, No. 15528.
(Certiorari to Wayne.)

To compel respondent to pay over to relators the amount awarded to them as damages, in a street opening proceeding, or in case it shall appear that there is no money in any fund applicable to such payment, that the amount of said award may be included in the next tax levy.

The circuit judge denied the writ. Reversed and writ granted May 12, 1896, with costs.

1434 CHUBB vs. TOWNSHIP BOARD (Scio), 3 M., 121.

To compel respondents to pay damages to a party through whose lands a highway was claimed to have been laid.

Denied 1854.

Held, that it did not appear that the road was ever legally laid out or established.

1435 ANDERSON vs. TOWNSHIP BOARD (La Grange), 2 M., 188.

To compel the board to draw an order for damages awarded upon laying out a highway.

Denied.

In their answer, respondents questioned the regularity of the proceedings, but the court held that mere irregularities which would not render the proceedings absolutely void, questions involved in the merits of the controversy, fraud or misconduct of the parties or officers, could not be inquired into upon the application for an order for the damages assessed. The court, however, denied the application, on the ground that the demand included a sum for interest which the court held could not be legally claimed. The court further refused to permit an amendment of the order to show cause.

1436 TRUAX ET AL. vs. STERLING (Commissioner of Highways, Dorr Township), 74 M., 160.

To compel respondent to issue orders to pay damages awarded by a former commissioner in proceedings to lay out a highway.

Denied February 15, 1889, on the ground that the whole proceedings to lay out such highway are fatally defective.

1437 HOBERT vs. SUPERVISOR AND TOWNSHIP CLERK (Blackman), 14 M., 336.

To compel respondents to issue orders for the payment of certain audited claims.

Denied July 11, 1866.

Held, that the audit of the claims was unauthorized.

1438 ESTES vs. DENAHY (Twp. Treas., Elk Rapids), 20 M., 349.

To compel respondent to pay to the relator certain moneys

which relator claims were appropriated to the improvement of the Traverse Bay and Houghton State road.

Denied May 10, 1870.

Held, that the act No. 471, Laws of 1867, p. 964, is unconstitutional.

1439 HART vs. BOARD OF SUPERVISORS (Genesee), No. 14800, 105 M., 209. (Certiorari to Genesee.)

To compel respondents to audit relator's account, under 3 How. Stat., Sec. 2155, for building a fish chute in his dam.

The circuit judge granted the writ. Affirmed April 30, 1895, with costs.

1440 BEARD ET AL. vs. DE GOIT (Clerk, Burdell Township), 58 M., 245.

To compel the clerk to countersign an order in favor of relators, for the construction of a bridge.

Denied October 27, 1885.

The lowest bidder declined to give the required security and the next higher bidder consenting, a contract was entered into by the commissioner with relators, who had not submitted a bid.

Held, that the commissioner had no authority to let jobs for which the statute requires sealed proposals, to persons who did not make such proposals and at a time subsequent to the opening of the bids.

1441 KNAPP ET AL. vs. SWANEY (Chairman) AND HUNTER (Secretary), 56 M., 345.

To compel the execution and delivery of an order on the county treasurer for the amount of certain estimates to relators, as contractors for the construction of the county court house.

Denied April 15, 1885.

Respondents are respectively chairman and secretary of the building committee. The contract provided that payments were to be made upon certificate of the architect, provided that there be no legal or lawful claims against the contractors for work or materials furnished.

Held, that there was nothing ultra vires in this condition, and that relators were bound by it.

1442 MULHOLLAND (Director) vs. ADAMS (Moderator), No. 12288½.

To compel respondent to sign order to pay for repairs to school building, it affirmatively appearing that the only fund on hand was a sinking fund, and at the annual school meeting the electors had not only refused to raise money for this purpose, by tax, but had declined to appropriate any portion of the sinking fund therefor.

Order to show cause denied October 29, 1891.

1443 PECK ET AL. vs. ADAMS (Moderator), No. 12478.

In Mulholland vs. Adams, Supra, the director applied for the writ. Here the petitioners are the parties who did the work.

Denied January 20, 1892, with costs.

1444 PFANNER vs. PENNEY (Drain Commissioner), No. 13156.

To compel the issue of orders for work upon a drain, under a contract with the drain commissioner.

Granted December 1, 1892, with costs.

Respondent is the successor of the drain commissioner who constructed said drain, and in his answer he questioned the validity of the proceedings.

1445 MELLINGER vs. MELLINGER (Township Treasurer), No. 13124.

To compel the payment of certain orders issued by a drain commissioner.

Granted January 11, 1893.

Respondent alleged that he had no funds in his hands applicable to the payment of said orders. Thereupon an issue was framed and sent down for trial, and the jury found the facts for relator. After the return of the verdict exceptions thereto were filed and a hearing had thereon.

1446 MEE vs. COUNTY TREASURER (Benzie), 41 M., 6.

To compel payment of certain orders granted by the board of supervisors while sitting at Frankfort, after the county seat had been removed from that place to Benzonia.

Denied June 3, 1879.

It appeared that the board had assumed to recanvass the vote by which the county seat was removed, and had declared the county seat to be at Frankfort.

Held, that the county seat could not be shifted at the will of the supervisors, after they had once canvassed the vote for its removal, and located it in accordance with the result. Attorney General vs. Supervisors (Lake), 33 M., 289; Attorney General vs. Supervisors (Benzie), 34 M., 211 (1607).

1447 MERRILL vs. COUNTY TREASURER (Gladwin), 61 M., 95.

To compel payment of the amount of a contingent county order.

Denied April 22, 1886.

The answer set forth that the order was fraudulently obtained and that the claim is barred by the statute of limitations.

A hearing was had upon petition and answer, the answer was taken as true and the writ refused.

1448 McDONALD vs. KELBY (Township Treasurer), No. 12349½.

To compel respondent to certify that a certain highway order had been presented for payment, and that payment had been refused, because of lack of funds, in a case where respondent claimed that the order had been paid.

Order to show cause denied November 18, 1891.

1449 DAVOCK vs. CONTROLLER (Detroit), No. 14815, 105 M., 120.
(Certiorari to Wayne.)

To compel respondent to issue his warrant for the payment of a warrant, issued by the board of health, established by Act No. 10, Laws of 1895.

The circuit judge granted the writ. Affirmed April 26, 1895, with costs.

The case involved the constitutionality of the Act referred to.

1450 HUTCHINSON vs. FLETCHER (Director School District),
No. 13094½.

To compel respondent to exhibit to petitioner the order-book of said district, together with the books containing the records and proceedings of the said district, and to issue and sign an order on the assessor in favor of relator for such amount as said order-book shall show that petitioner has not received.

Order to show cause denied October 4, 1892.

**1451 PEARSALL vs. TREASURER, CLERK AND COMMON COUNCIL
OF THE VILLAGE OF EAST JORDON**, No. 11725.

To compel payment of a warrant drawn December 10, 1888, and negotiated by order of the village council, to pay for fire apparatus furnished to the village, the defense being that there was no authority to draw the warrant when drawn, as there was

no money then in the treasury, and there was no authority to make it payable with interest at ten per cent.

Granted February 5, 1891, without costs, with interest payable at six per cent.

1452 MINER vs. VEDDER (Treasurer, Village of Hudson), 66 M., 101.

To compel payment of certain village orders.

Granted May 5, 1887.

An issue was framed and sent down for trial. Complaint was made that a circuit judge refused to submit certain special questions to the jury, under How. Stat., 7606. The court doubts whether the statute applies to the trial of issues like the present, but holds that there was no harmful error. The writ issued not as a matter of right, but because the village is willing to pay to end the controversy. No costs were allowed.

1453 NOBLE ET AL. vs. TOWNSHIP OF PARIS, 56 M., 219.

To compel the payment of a town order, the return showing that the order was fraudulently issued, without consideration, and without any allowance by the proper authorities.

Denied January 30, 1885.

1454 BOARD OF EDUCATION (Stephenson) vs. **PERRIGO**, No. 13190.

To compel payment over of certain moneys which came into respondent's hands, as former assessor of the school district out of which the present district was carved, the respondent insisting that the new district had not been legally constituted.

Order to show cause granted November 30, 1892.

1455 BURNS (Director School Dist.) vs. **BENDER** (Moderator).
36 M., 195.

To compel respondent to countersign an order in favor of the assessor of the district, for money in the hands of the town treasurer belonging to the district.

Granted April 10, 1887.

Respondent was also township treasurer and claimed to have paid over the money to a former assessor, who had paid it to a teacher, who had a valid contract against the district, but it is not claimed that the payment was made upon any warrant.

Held, that such payment over to the assessor was unlawful; that the disbursement of school moneys is required to be made by orders drawn on the assessor by the director and countersigned by the moderator; that all moneys belonging to the district in the town treasurer's hand are required to be paid to the assessor on warrant so drawn and countersigned; that it is made the express duty of the director to draw and sign such warrants payable to the assessor, and to present the same to the moderator for his signature; that it is made the duty of the moderator to countersign such warrant; that the assessor is expected to receive the warrant in its completed form from the director, and as the director is to be the active party in procuring the moderator's signature and the proper custodian of the warrant until its completion for the purpose of delivery to the assessor, he may properly be a relator to obtain such completed warrant by compulsion.

Whether the assessor would be a competent relator—Query.

1456 BRYANT (Assessor School District) vs. **MOORE** (Township Treasurer), 50 M., 225.

To compel township treasurer to pay over moneys in his hands raised for school purposes.

Granted February 27, 1883.

It was objected that the warrant did not specify a precise sum,

and as to a portion of the moneys in respondent's hands it was alleged that suit had been commenced against respondent for its restitution, upon the ground of its wrongful and illegal collection, and that the suit is still pending. The application was dismissed as to the portion involved in the suit, but was granted as to the remainder.

1457 McPHARLIN (Treas. School District) vs. MAHONEY (Township Treasurer), 30 M., 100.

To compel the township treasurer to pay over to relator, treasurer of the board of school inspectors, township library moneys.

Granted July 22, 1874.

Held, that relator was the proper custodian of these moneys, and that respondent was not entitled to withhold them until drawn out by the inspectors as needed for specific appropriations, and that the refusal of payment of the order, though it was slightly in excess of the moneys in his hands, was a sufficient ground for this application, inasmuch as respondent made no offer to pay what he had, but refused, on an entirely different ground, to pay anything.

1458 MARTIN (Assr. School District) vs. MITCHELL (Township Treas.), No. 12104.

To compel payment over of school moneys to assessor.

Granted July 27, 1891, in default of answer, with costs.

1459 JONES (Assr. School District) vs. WRIGHT (Township Treasurer), 34 M., 371.

To compel payment over of certain school moneys.

Granted June 24, 1876.

1460 BOARD OF EDUCATION (Muskegon) vs. EYKE (City Treas.).
No. 12694.

To compel payment over of amount of delinquent school taxes.

Granted April 20, 1892, without costs.

The answer set up that respondent had been unable to collect taxes, among which were the school taxes, and that he had returned such to the county treasurer as delinquent. Relator insisted that under Sections 41-43 of Act No. 200, Public Acts of 1891, the school tax should be paid over in full, out of moneys collected, irrespective of delinquent taxes.

1461 BOARD OF EDUCATION (Detroit) vs. COUNTY TREASURER (Wayne), 8 M., 392.

To compel the payment over of moneys received from fines and recognizances.

Granted June 9, 1860.

The question raised was whether the amounts paid in were liable to deductions for expenses, either attending the collection of the sums paid in, or embracing the general criminal expenses of the county, and the court held that they were not.

Held, further, that at the hearing the party showing cause is entitled to open and close the argument.

Note.—The Old Rule No. 34 provided for but one argument on each side. The New Rule No. 27 provides that only one counsel shall be heard on a side.

1462 AUDITOR GENERAL vs. VAN TASSEL (County Treasurer, Tuscola), 73 M., 28.

To compel respondent to pay over certain state taxes collected by him.

Granted November 28, 1888.

The county claimed the right to set off amounts alleged to be due from the State.

1463 COLBY (Treasurer of the Village of Muskegon Heights) vs. VAN ZALIGEN (County Treasurer), No. 12347.

To compel the payment over to relator of certain liquor taxes collected by respondent.

Granted November 18, 1891.

The village of Muskegon Heights was incorporated by the legislature of 1891, the act being given immediate effect, and the bill was approved April 21, 1891. The taxes were paid May 5, 1891. The affidavit and bonds filed with the respondent showed that the parties proposed to carry on the business in the village of Muskegon Heights, although the bonds were approved by the township officers. The respondent set up that the first election of the village was not held until June 1, 1891, and that he had paid the moneys over to the township.

1464 GROSSE POINTE VILLAGE vs. PHELPS (Co. Treas.), No. 11664.

To compel respondent to pay over one-half of an amount received by him from one Neff, as a liquor tax for 1890.

Denied February 27, 1891, without costs.

It appeared that relator had claimed and received from respondent one-half of the tax collected from Neff for the year 1889, when not entitled to it, because the territory in which Neff's place of business was located was not included within the village until after the tax became due and payable, and respondent claimed the right to set off the payment so made against the amount collected for 1890.

1465 DECATUR VILLAGE vs. TOWNSHIP BOARD (Decatur), 33 M., 334.

To require payment over of certain liquor taxes collected in the village by the township

Granted January 21, 1876.

The right of villages to the liquor tax collected within their

borders is sustained, and such a tax belonging to a village having been assessed and collected by the township officers and used for township purposes, mandamus is granted to require it to be paid over to the village authorities.

The question involved being purely one of law, and there being no disputed questions of fact, the claim is in no proper sense a disputed claim, requiring a formal trial; and it would be idle to send such a case to a jury when it would be the duty of the court to instruct the jury to return a verdict for the relator.

1466 EAST SAGINAW vs. COUNTY TREASURER (Saginaw),
44 M., 273.

1467 GREEN vs. COUNTY TREASURER (Bay), 44 M., 273.

To compel payment over of moneys received under protest from parties paying taxes under liquor law of 1879, the ground of the protest being the alleged invalidity of the constitutional amendment of 1875, removing the prohibition against licenses.

Granted October 6, 1880.

1468 COVEY vs. IMBER (Twp. Treas., Batavia), No. 14834. (Certiorari to Branch.)

To compel respondent to pay over to the county treasurer the proceeds of a certain drain tax, orders for the work upon which drain are held by relator. The circuit judge denied the writ.

Reversed, and mandamus granted, with costs of both courts, June 5, 1895.

1469 KINES ET AL. vs. TOWNSHIP BOARD AND TOWNSHIP TREASURER (Wheeler), No. 13141½.

To compel the payment over of a certain sum deposited with the township treasurer to await the result of proceedings to enjoin the collection of a drain tax, after decree in favor of relators, where a motion had been made to set aside said decree.

Ordered that the money be paid into court to await the result of the motion to vacate decree, November 15, 1892, with costs.

1470 BYLES vs. TOWNSHIP OF GOLDEN, 52 M., 612.

Mandamus is not the proper remedy for compelling a township to refund the amount of a tax unlawfully levied if there is any issue involved which should go to a jury.

1471 SPAULDING vs. BLACK (Controller, Detroit), No. 13262.

To compel issuance of warrant for the payment of a certain judgment against the city.

Order to show cause issued January 3, 1893.

Case afterwards settled.

1472 GRECE vs. RUSH (Controller), No. 11990.

To compel respondent to pay over moneys upon a judgment rendered in behalf of Mary Reynolds against the city of Detroit, under a power of attorney.

Denied May 19, 1891, with costs.

Respondent declined payment because of the revocation of the power of attorney.

1473 HAYDEN vs. HEFFERAN (Admr.), No. 13978½.

To compel respondent to pay the interest on a judgment for costs recovered against the estate.

Order to show cause denied January 22, 1894, on the ground that the application should have been made to the Circuit Court.

1474 HAYDEN vs. HEFFERAN (Admr.), No. 13985, 99 M., 262.
(Certiorari to Kent.)

To compel respondent to pay interest on a judgment for costs in relator's favor, on appeal from the probate of a will. The Circuit Court denied the writ.

Reversed and writ granted March 6, 1894, with costs.

Respondent contended that this is not such a judgment as bears interest, and that if it is, no interest can be computed previous to the date of taxation of the costs.

Held, that the judgment for costs bears interest from the date of its rendition.

1475 SMITH ET AL. vs. BURTON (Guardian), 48 M., 643.

To compel a guardian to pay a claim against his ward which the Probate Court had adjudged valid.

Order to show cause denied June 14, 1882.

Held, that the proceeding must be by action.

1476 EYKE (City Treasurer, Muskegon) vs. **LANGE** (Cashier Merchants' National Bank), No. 12551; 90 M., 592; 104 M., 26.

To compel respondent to pay taxes on shares of bank stock assessed against stockholders.

Denied March 11, 1892, with costs.

Affirmed on rehearing ordered by the court, June 4, 1895.

1477 MINER vs. TRUSTEES OF THE MICH. MUT. BENEFIT ASSOCIATION OF HILLSDALE, 65 M., 84.

To compel an assessment to pay a judgment.

Denied February 10, 1887.

Relator recovered judgment, and execution had issued and was returned unsatisfied.

Held, that under How. Stat., Sec. 8153, sequestration can only be had in a court of equity.

1478 BATES vs. DETROIT MUT. BENEFIT ASSOCIATION, 47 M., 646.

To compel respondent to levy an assessment to pay a death claim.

Denied October 18, 1881.

Held, that suit upon the undertaking was the proper remedy. *Burland vs. N. W. Mut. Benefit Association*, 47 M., 424-426.

1479 McBRIDE vs. COMMON COUNCIL (Grand Rapids), 32 M., 359.

Appellant applied to the Circuit Court for a mandamus to compel the common council to issue a warrant in payment of a salary. The Circuit Court denied the writ on the ground of want of authority to issue the writ except where necessary to carry into effect its own orders, judgments and decrees, or in the exercise of a general control over inferior courts and tribunals.

Judgment affirmed and writ of error dismissed.

Mandamus is a very proper writ to enable the Circuit Courts to give effect to their appellate and supervisory authority in some cases and is often made use of for such purposes. See *Layton vs. State*, 28 N. J., 575, 577. But beyond that, it has no necessary office in the scope of Circuit Court powers. The writ is not a judicial, but a prerogative writ, 3 Bl. Com., 110. It was so defined by Lord Mansfield, who spoke of it as a prerogative writ flowing from the king himself, sitting in the Court of King's Bench, superintending the police, and preserving the peace of

the country. *The King v. Barker*, 1 Wm. Black., 352. Formerly no issue could be made upon the return to it but if the return made sufficient answer to the application the proceeding must stop there, and the party injured by its falsity was put to his action on the case for damages, 3 Bl. Com., 111. The Statute, 9 Anne, made provision for a traverse in some cases, but it was not until that of 1 Wm. IV., c. 21, that the right to take issue on the return was given generally. Even after that statute a writ of error did not lie to review the final determination of the Court of King's Bench, *Rex vs. Dean & Chapter, of Dublin*, Strange, 536; same case in error, 2 Bro. Par. Cas., 554. The writ of error was given by Stat. 6 and 7, Vic., c. 67; 3 Broom & Hadley's Com., 458. The difficulties in the way of a review in the customary method are pointed out in the New Jersey case to which reference has already been made. "The nature and design in the proceeding, in its original institution, precluded the idea of a review by writ of error. It was not in the nature of a civil suit between parties to settle private rights. The award of the mandamus does not purport to adjudge or decide any right.

It is rather in the nature of an award of execution than of a judgment. It is the mode of compelling the performance of acknowledged duty, or enforcing an existing right, rather than deciding what that right or duty is. The award is no finality. It concludes nothing. If the writ is denied, the relator cannot have error, and if granted, the award could not be pleaded in bar. Like a *procedendo*, it was a simple command to perform a duty. The award of a mandamus to an inferior court, to proceed to judgment, to issue an execution, to restore an appeal,—to a public officer, to perform a specified duty,—is not founded on a judicial determination of any right. There is no judgment or order in the nature of a judgment, from which error can lie. The use of the writ has been extended to cases which involve, more directly, private right; but even in such case at common law, there was no judicial determination of the right on the proceeding on mandamus." *Layton vs. State*, 28 N. J., 575,

576. All the authorities speak of the writ as discretionary, and both Mr. Selwyn in his *Nisi Prius* (7 Am. Ed., 1078), and Mr. Chitty in his *General Practice* (Vol. 1, 791), assign as a reason why the power to issue it ought to be exercised with great caution, that a writ of error does not lie on this proceeding. See also High on Extraordinary Remedies, Sec. 536, and cases cited."

Note—Powers of Circuit Court enlarged. Constitution amended. Laws 1893, pp. 434-452. Circuit Court Rule No. 46; old rule 107.

1480 McBRIDE vs. CITY OF GRAND RAPIDS, 47 M., 236.

Mandamus is the proper remedy to enforce the payment by municipal corporations of an official salary, the amount of which is fixed. See Nos. 1390, 1407, 1411, 1499, 1523.

1481 MILLER vs. BOARD OF AUDITORS (Wayne), 41 M., 4.

To compel the board to audit and allow a sum which relator claims to be due him as a part of his salary as assistant prosecuting attorney.

Granted June 3, 1879.

Held, that the board, after fixing a salary, could not change it without some further action spread upon their record, and that the fact that relator has receipted for less than he was entitled to did not amount to a waiver of his rights. Citing *Douvielle vs. Supervisors*, 40 M., 585 (1490).

1482 WICKHAM (Pros. Atty.) vs. BROWN (County Treasurer), No. 13763½.

1483 WICKHAM (Pros. Atty.) vs. KELLY (Chairman Board of Supervisors), No. 13762½.

To compel the chairman to sign an order for relator's salary and the treasurer to pay the same.

Order to show cause denied in each case, October 24, 1893, on the ground that the application should be made to the Circuit Court.

1484 KNAPPEN vs. BOARD OF SUPERVISORS (Barry), 46 M., 22.

To compel respondents to pay relator's salary while prosecuting attorney for 1880, the second year of his term, at a rate fixed by the board at its October session in 1879, the board having assumed to increase the salary at that time, which action was afterwards rescinded and it was claimed by relator that the salary having been once fixed the board had exhausted its power.

Denied April 13, 1881.

At the October session of the board in 1878, the salary of the officer was fixed at \$700, under Sec. 535, Comp. Laws. In 1879 the legislature enacted that the annual salaries of all salaried county officers which are now or may be hereafter by law fixed by the board of supervisors, shall be fixed on or before the last day of October prior to the commencement of the term of said officers, and the same shall not be increased or diminished during the term for which said officers shall have been elected or appointed.

The board, in 1879, assumed to act upon the subject and increase the salary by \$100, but at an adjourned meeting in January its action was rescinded.

1485 DOZER (Pros. Atty.) vs. CROSS (Clerk), TUCKER (Chairman) AND BOARD OF SUPERVISORS (Cheboygan), No. 15843.

To compel payment of a balance due relator as salary while prosecuting attorney.

Granted October 21, 1896, with costs.

Relator, during his official term, was taken sick, and, upon the advice of his physician, went south, and was absent from April 5 to May 25, during which time such matters pertaining to the

office as could not be postponed were attended to by another attorney, to whom the board had allowed the sum of \$102, which amount the board claimed the right to deduct from relator's salary.

It appeared that the circuit judge was disqualified and the court therefore entertained the petition.

1486 SCOTT vs. MAYOR, COMMON COUNCIL AND RECORDER
(West Bay City), No. 14799, 106 M., 288. (Certiorari to Bay.)

To compel payment of relator's salary as city controller.

The circuit judge denied the writ. Modified July 13, 1895.

Scott and one Glaser were candidates for the office, and the returns of the election inspectors gave Scott fourteen votes over Glaser. On a re-count Glaser was declared elected, and was inducted into the office in April, 1894, and performed the duties of that office until January 11, 1895. Quo warranto proceedings were instituted, ultimating in a judgment of ouster in favor of Scott, January 8, 1895.

The city paid the salary to Glaser while he occupied the office, and Scott seeks to compel payment of the salary to him, for the period during which he was excluded from the office.

It appeared that the last payment to Glaser was made after the judgment of ouster had been rendered.

Held, that such payment was unwarranted and the writ was granted directing the payment over to relator of that amount without costs.

1487 RUSH vs. COMMON COUNCIL (Detroit), No. 15896. (Certiorari to Wayne.)

To compel the payment to relator, who was the controller of the city of Detroit, and by the charter made ex officio a member of the board of estimates, of the per diem allowed by the charter for attendance upon the sessions of said board.

The circuit judge granted the writ. Reversed, with costs, Dec. 4, 1895.

1488 COLEMAN vs. COMMON COUNCIL (Cadillac), 49 M., 322.

To compel respondent to pay to relator a sum alleged to be due and unpaid as part of his salary as health officer of said city.

Denied October 28, 1882.

The board of health had assumed to fix the compensation of the health officer so as to bind the council to the result, but it is held, that the power is vested in the council.

1489 THOMAS (Probate Judge) vs. BOARD OF SUPERVISORS (St. Clair), 45 M., 479.

To compel respondent to pay relator's salary according to the amount as first fixed for the years 1879 and 1880, the board having assumed in the fall of 1878 to reduce his salary.

Granted as to 1880, but denied as to 1878, without costs, January 28, 1881.

The court found that he had assented to the receipt of his salary for 1878.

1490 DOUVIELLE (Probate Judge) vs. BOARD OF SUPERVISORS (Manistee), 40 M., 585.

To compel respondent to allow to relator the salary fixed before his election, the board having subsequently reduced it.

Granted April 22, 1879.

1491 GOODALE vs. BOARD OF SUPERVISORS (Marquette), 45 M., 47.

To compel respondents to audit relator's claim and allow him at the rate of \$1,200 per annum, and rescind the proceedings taken to reduce his salary as official stenographer of the 12th judicial circuit.

Denied November 10, 1880.

Held, that the entire circuit could not be compelled to pay

the appointee more than the statutory salary of \$2,000; that this should be apportioned by the circuit judge among the counties composing the circuit, and that the official stenographer cannot compel the individual counties to pay him specific sums by way of compensation without showing that their relative quotas toward his statutory salary amount to those sums.

1492 CHAPOTON vs. COMMON COUNCIL (Detroit), 38 M., 636.

To compel respondent to pay to relator, who is a member of the board of public works of Detroit, his salary as fixed immediately after his appointment.

Denied April 16, 1878.

Relator was appointed for four years from January 30, 1877. On the 11th of February, 1877, his salary was fixed for the ensuing year at \$3,000. In December, 1877, it was fixed for the second year at \$2,500.

The charter of the city, by a provision made in 1871, forbids a reduction of salary of any city officer during his term. Act No. 392, Laws of 1873, creating a board of public works, provides that each member shall receive such salary as the Common Council may from time to time establish.

1493 STOCKWELL vs. BOARD OF SUPERVISORS (Genesee), 56 M., 221.

To compel respondents to pay to relator, who is the official stenographer for the county, the per diem compensation which had been fixed for the office before his appointment, the board having subsequently fixed an annual salary.

Denied April 9, 1885.

Held, that the statute clearly contemplated an annual salary, and that the fixing of a per diem allowance was wholly incompetent.

1494 WALCOTT vs. MAYOR, RECORDER AND COMMON COUNCIL
(Jackson), 51 M., 249.

To enforce payment of a claim for salary, where relator first elected to sue in assumpsit, but left the case undetermined, and after ten years had passed from the date of his claim, files his application.

Denied July 2, 1883.

1495 MOORE ET AL. vs. BOARD OF AUDITORS (Wayne), No. 12494½,
90 M., 269.

To compel the board to issue warrants for salaries to relators as deputy game and fish wardens, at the rate of \$1,000 per year.

Denied February 3, 1892.

Held, that the board have authority under Sec. 7 of Act No. 28, Laws of 1887, to fix the compensation for each year at such sum as to them may seem proper.

1496 SPEED vs. COMMON COUNCIL (Detroit), No. 14079, 100 M., 92.
(Certiorari to Wayne.)

To compel payment of relator's salary as city counselor.

The circuit judge granted the writ. Affirmed April 10, 1894, with costs.

Held, that mandamus is the proper remedy to compel the payment by a municipal corporation of an official salary, the amount of which is fixed. *McBride vs. Grand Rapids*, 47 M., 236 (1480).

1497 WILKINSON vs. COMMON COUNCIL (Saginaw), No. 15838;
3 D. L. N., 809; 70 N. W., 142. (Certiorari to Saginaw.)

To compel respondent to audit and pay relator's account for salary as a member of the police force, after his removal from the position.

The circuit judge denied the writ. Affirmed February 18, 1897, with costs.

Held, that it appearing that the board had the power to remove relator, and that as under the city charter he was only entitled to compensation for the time he was in active service, no recovery could be had.

1498 WESCH vs. COMMON COUNCIL (Detroit), No. 15002; 64 N. W., 1051; 2 D. L. N., 624. (Certiorari to Wayne.)

To compel the payment of relator's salary as meat inspector.

The circuit judge denied the application.

Affirmed November 19, 1895, with costs.

The charter empowers the council to appoint a meat inspector, the ordinance provides that such inspector shall receive such annual salary as the council may determine, and the charter provides that the compensation of no officer shall be diminished during the term for which he was elected or appointed.

Relator's term commenced July 1, 1894, but after his appointment and before his term commenced the council reduced the compensation below that paid for the preceding year.

Held, that relator's appointment and acceptance were subject not only to the right of the council but to its duty as well to fix the salary.

1499 SCHMITTDIEL vs. BOARD OF AUDITORS (Wayne), 13 M., 233.

To compel respondent to allow and pay the salary of the clerk of the Police Court, which is prescribed by the Common Council under the statute, and is made payable out of the county treasury.

Granted May 2, 1865.

1500 ALBERTS vs. TORRENT (Mayor, Muskegon), No. 13687, 98 M., 512. (Certiorari to Muskegon.)

To compel respondent to sign and deliver to relator orders on

the city treasury for relator's services as inspector of elections, and also an order for the sum of \$50 as and for his salary as alderman.

Denied as to amounts claimed for services as inspector of elections, it being held that the aldermen are made members of these boards by virtue of their official position as aldermen, and that this service is one which they are authorized and directed to perform by the express terms of the charter, which limits their compensation to a specific salary.

Granted as to the claim for salary, it being held that the mayor had no right to refuse to sign warrants for sums legally due because the aldermen had previously received money to which they were not legally entitled, January 26, 1894.

1501 CASWELL vs. MARSAC (Recorder, Bay City), No. 13723, 99 M., 417. (Certiorari to Bay.)

To compel respondent to draw an order on the city treasurer for payment of relator's salary as sidewalk inspector, where respondent sets up that relator was not legally appointed because the mayor vetoed the resolution appointing him, and the vote to adopt, notwithstanding the veto, was declared lost for want of the necessary two-third's vote, but another resolution was offered which received the necessary vote. The circuit judge denied the writ.

Reversed and writ granted March 20, 1894.

1502 OSBORNE vs. COMMON COUNCIL (Detroit), No. 15897; 69 N. W., 644; 3 D. L. N., 687. (Certiorari to Wayne.)

To compel respondent to pay to relator, who had been a clerk in the office of the receiver of taxes, but who had been discharged by said receiver, salary alleged to have accrued since relator's discharge, the petition setting forth that the receiver of taxes had no power to discharge relator.

Reversed and writ denied December 24, 1896, with costs of both courts. Application for re-hearing denied, with costs.

1503 BACON vs. MERRICK (Assessor School Dist.), No. 12298.

To compel payment to relator of one month's salary as teacher.

Denied October 28, 1891, without prejudice and without costs.

Respondent insisted that the contract with relator did not provide for monthly payments; that at the time the order was drawn relator had not performed one month's services, and that the person who signed the order as director was not an officer of the board.

1504 HAZEN vs. LERCHE (Assessor School District), 47 M., 626.

To compel payment of an order for one month's salary as school teacher.

Denied January 25, 1882.

The return set forth that relator was employed by two members of the school board without calling any meeting of the board and without consultation with respondent or his knowledge.

1504½ COFFIN vs. BOARD OF EDUCATION (Detroit), No. 16357, 4 D. L. N., 609. (Certiorari to Wayne.)

To compel respondent to pay relator's salary as teacher.

The circuit judge granted the writ. Reversed and writ denied September 14, 1897.

Held, that where a contract of employment entered into between a teacher and a board of education had been terminated by the board, mandamus will not lie to review the action of the board and compel payment of salary under such contract.

1505 RANSOM vs. SAWYER (Assessor School Dist.), No. 12908.

To compel payment of an order issued for relator's service as teacher.

Order granted in the alternative June 28, 1892.

1506 ALLEN vs. FRINK (Assessor School Dist.), 32 M., 96.

To compel payment of warrant drawn in favor of a teacher.
Denied April 30, 1895.

Held, that a want of funds was a sufficient answer.

1507 TRACY (Moderator) vs. RICE (Director), No. 12011.

To compel respondent to sign an order drawn to pay one month's salary to a teacher.

Granted in the alternative May 12, 1891.

1508 MARTIN vs. TRIPP (Assessor School Dist.), 51 M., 184.

To compel payment of orders for teachers' salary issued by proper school officers.

Granted June 20, 1883.

Held, that the answer set up no valid defense, and inasmuch as the order was such a settled demand as would sustain a recovery therefor at law, interest was allowed on the same.

**1509 PHILLIPS vs. SCHOOL DISTRICT (N. Buffalo), 79 M., 170.
(Error to Berrien.)**

Plaintiff brought assumpsit upon a school district order.

Held, that mandamus is the proper remedy.

1510 CLEVELAND vs. AMY (Assessor), No. 12330.

To compel respondent to pay order drawn by P. H. Doyle, moderator, and D. B. Sanders, director, for relator's salary as teacher. Contract entered into August, 1891, for term to be fixed at annual meeting. School to commence September 7, 1891. At annual meeting one Chipman received a plurality only of votes cast for director to succeed Sanders, and one Durham received a plurality only of votes cast for moderator to succeed Doyle. Sanders and Doyle insisted that there was no election. Payment was refused (1) because the order was not signed by officers de jure, and (2) that the then officers had no authority to bind their successors by a contract extending beyond their term of office.

Granted November 13, 1891, with costs.

1511 SEABURY ET AL. vs. BOARD OF AUDITORS (Wayne), No. 13455, 96 M., 46.

To compel respondent to pay relators' salaries as deputy clerks of the Justice Court of Detroit.

Granted June 8, 1893.

1512 MUNGER (Co. Treas.) vs. CLERK (Board of Supervisors, Bay), 38 M., 307.

To compel respondent to sign an order upon the county treasurer for the amount received by said county treasurer for office charges on payments under the tax laws, the same having been included in the compensation of that officer by the board of supervisors.

Granted January 29, 1878.

1513 KENNEDY (Co. Audr.) vs. GIES (Co. Treas., Wayne), 25 M., 82.

To compel payment of a warrant drawn by the county audi-

tors for the sum of \$50 in favor of a member of the board for services.

Denied April 30, 1872, with costs.

Held, that the Act of April 12, 1871, Session Laws, Vol. III, pp. 155-6, which fixed the salary of the auditors and declared that the sum so fixed "shall be in full for all services and expenses and traveling fees in attending upon the duties of his office" is valid, and limited the amount to which relator is entitled.

1514 PECK vs. BOARD OF SUPERVISORS (Kent), 47 M., 477.

To compel payment of a claim against the county.

Denied January 18, 1882.

Relator, as sheriff, without authority from the board, employed a night-watchman at the jail, and the claim is made for moneys paid to the watchman and for his board. He also hired an office for himself, claiming that the one provided by the county was wholly insufficient and unsuitable, and also that his claim was sanctioned by a committee of the board.

Held, that respecting such claims the board is vested, by the Constitution, with exclusive control and mandamus will not lie.

1515 VIDETO vs. BOARD OF SUPERVISORS (Jackson), 31 M., 115.

To compel an allowance of an attorney fee of ten dollars for attending a prosecution before a justice of the peace, under the prohibitory liquor law, in a case where the prosecution was instituted by a private citizen; the attorney was not the prosecuting attorney and the supervisors had prescribed no rule in advance, but had after the service had been rendered allowed relator two dollars and refused to allow any more.

Denied January 12, 1875.

**1516 FULLER (Twp. Treas.) vs. THE TOWNSHIP BOARD (Mussey),
No. 12330½.**

To compel allowance of claim for legal services.

In a certain litigation, growing out of the seizure of certain personal property for taxes, attorneys were employed who afterwards presented their claims to the township board. Upon disallowance of the claims application is made here by relator.

Order to show cause denied October 28, 1891.

**1517 PETERS vs. BOARD OF SUPERVISORS (Schoolcraft),
No. 12347½.**

To compel respondent to pay relator's bill of \$25 for services as attorney appearing in behalf of the people, at the request of the circuit judge, and resisting a motion to quash a complaint and warrant and discharge the prisoner, the prosecuting attorney being disqualified.

Order to show cause denied November 18, 1891.

**1518 DE LONG vs. BOARD OF SUPERVISORS (Muskegon), No. 15855;
3 D. L. N., 767; 69 N. W., 115. (Certiorari to Muskegon.)**

To compel respondent to allow relator's claim for services in taking a criminal case to the Supreme Court, and the expenses of printing record and brief.

The circuit judge denied the writ. Affirmed February 2, 1897, with costs.

Held, that an attorney appointed to defend an indigent prisoner in the Circuit Court, cannot, upon his own motion upon conviction, appeal the case to the Supreme Court and make the charge for his services and the expenses of such appeal a claim against the county.

1519 SPRINGER vs. BOARD OF AUDITORS ET AL. (Wayne),
No. 14005, 99 M., 513. (Certiorari to Wayne.)

To compel payment of attorney's fees on appeal to this court in a criminal case under How. Stat., Sec. 9047. The circuit judge refused the writ on the ground that the amount of such fees must be fixed by the Supreme Court.

Affirmed April 9, 1894, with costs.

Overruled in *People vs. Hanifan*, 99 M., 516; where it was held that the board of auditors only have jurisdiction to determine the amount of such fees.

1520 POTTS (Justice of the Peace) vs. BOARD OF SUPERVISORS
(Jackson), 47 M., 635.

To compel payment of certain charges for the trial of criminal cases in which the defendants pleaded guilty.

Denied January 25, 1882.

Held, that in such cases the justice was not entitled to a trial fee and was only entitled to the fees which were given for other specific services in the case.

1521 TILLOTSON vs. BOARD OF SUPERVISORS (Calhoun), No. 13136.

To compel respondents to pay relator certain fees as a justice of the peace, for examinations made prior to the issue of the warrant in certain criminal cases.

Denied December 1, 1892, with costs.

Held, that the examinations referred to in the statute, How., Sec. 9053, were those made after the issue of the warrant.

1522 MACDONALD (Justice) vs. THE BOARD OF SUPERVISORS
(Muskegon), 42 M., 545.

To compel the allowance of relator's claim for services as justice of the peace.

Denied January 23, 1880.

Held, that it was the duty of the relator in rendering his account to specify the services in detail, so that the board may determine whether the amounts charged corresponded with the statutory fees; that the board is not concluded by the account but may require proof, and may examine the docket and files, and the return made by the justice, and where they do so and reject claims on the ground that the services were not performed or that the charges made exceeded those allowed by the statute, their action would not be disturbed on a review of their finding upon the facts.

1523 MARTIN vs. BOARD OF AUDITORS (Wayne), 5 M., 223.

To compel respondent to issue a warrant to relator for services rendered as justice in criminal proceedings.

Granted June 10, 1858.

The answer set up that the warrant had been drawn and signed, but before it was delivered to relator it had been levied upon and being payable to relator or bearer, the constable had presented the same to the county treasurer and received payment thereon. As the respondent was a public body and appeared to have acted in good faith, costs were refused.

1524 KUHN vs. BOARD OF AUDITORS (Wayne), 10 M., 307.

To compel the board to allow a bill for services as justice in certain criminal cases.

Denied June 6, 1862.

The board reduced the claim on the ground of an over-charge in the amount of testimony taken down, and relator applied for a mandamus to compel the board to allow the amount deducted.

Held, that the Constitution having provided that the action of the board of county auditors in adjusting county demands should

be subject to no appeal, the Supreme Court cannot revise their action by mandamus and compel them to allow a demand which they have rejected on the ground that the services charged for were not performed.

1525 JAMINET vs. BOARD OF SUPERVISORS (Monroe), 77 M., 245.

To compel audit and allowance of relator's bill for justice's fees in a criminal proceeding.

Granted November 1, 1889.

1526 PISTORIOUS (Circuit Court Commissioner) vs. BOARD OF SUPERVISORS (Saginaw), 51 M., 125.

To compel the payment of relator's fees for taking testimony on criminal examinations.

Denied June 20, 1883.

The commissioner employed a stenographer to take the testimony.

Held, that Act No. 214, Laws of 1879, refers to cases where the evidence is taken by the officer in person; that in the present case what should be paid for what was done was not dependent on the tariff rates in the fee bill, but was such amount as would be a reasonable recompense, and of this the board had the lawful right to judge.

1527 HICKS vs. BOARD OF AUDITORS (Wayne), No. 13265, 97 M., 611.

To compel payment of a bill for services as assistant visitor of schools, at \$3 per day, under Act No. 147, Laws of 1891.

Denied February 9, 1893, with costs, on the ground that the compensation had not been determined by the county commissioner, as required by Sec. 10 of said Act.

1528 SCOTT vs. TOWNSHIP BOARD (Bingham), 32 M., 492.

To compel the allowance of a claim for costs and expenses of a proceeding by information, on relator's own account and not by direction of the township, to establish his right to the office of supervisor.

Denied October 22, 1875.

Held, that such costs and expenses are not a legal charge against the township.

1529 FOURNIER vs. MAYOR AND COMMON COUNCIL (West Bay City), No. 13189, 94 M., 463.

To compel respondent to allow a claim for compensation as street commissioner.

Granted January 18, 1893, with costs.

Held, that such costs and expenses are not a legal charge against the township.

1530 HICKEY vs. BOARD OF SUPERVISORS (Oakland), 62 M., 94.

To compel an allowance of relator's charges for services as constable.

Denied June 24, 1886.

Relator presented his claim, verified by his affidavit that it "was just and true and that the same had not been paid."

Held, that the affidavit was insufficient to establish the account or to prove that it was a proper charge, and that it was relator's duty to appear before the board, request action upon the claim and offer to submit proof thereof.

1531 ROSS vs. BARBER (Recorder, Bay City), No. 12050.

To compel respondent to draw and deliver an order for relator's services as alderman.

Denied June 10, 1891.

Petitioner had been elected an alderman of the fifth ward of Bay City. The Legislature afterwards passed an act re-dividing the city, and vacancies were declared and others appointed.

1532 CRYDERMAN (Drain Comr.) vs. TOWNSHIP BOARD OF RICHMOND, No. 12497.

To audit and allow a certain account for services.

Denied January 20, 1892, with costs.

Relator claimed that he was entitled to \$3 per day under the statute, inasmuch as no other rate had been fixed. Respondent insisted that a rate of \$2 per day had been fixed, and relator's account had been allowed accordingly.

1533 KINNEY (Sheriff) vs. BOARD OF SUPERVISORS (Kent), 51 M., 620.

To compel the board to allow relator's bill for expenses incurred in making an arrest, upon a mittimus granted by a justice of the peace under Comp. L., Sec. 7877, of a party who had been convicted of forgery, and admitted to bail pending a removal of the case to the Supreme Court, but the bail desiring to be released had applied for his surrender.

Order to show cause denied October 30, 1883.

1534 WHITE vs. BOARD OF SUPERVISORS (Manistee), No. 14657, 105 M., 608. (Certiorari to Manistee.)

To compel respondent to audit relator's claim for services rendered as policeman in the arrest of persons charged with offences against the laws of the State, under warrants issued by justices of the peace.

The circuit judge granted the writ. Affirmed June 4, 1895, with costs.

The charter makes it the duty of policemen to serve and execute all process directed or delivered to them for service; gives to them the powers of constable and provides that they may serve and execute within the limits of the city any other process which by law a constable may serve, and that the expenses of the prosecutions before justices of the peace of the city, for violation of the criminal laws of the State, shall be paid by the county.

1535 MINER vs. BOARD OF SUPERVISORS (Shiawassee), 49 M., 602.

To compel respondent to make compensation to relator for his services as circuit court commissioner, in taking and reporting the evidence on a hearing of charges which had been preferred against the prosecuting attorney of Shiawasse County.

Denied January 10, 1883.

Held, that an investigation, under Act 243, of 1879, is not a criminal proceeding in any such sense as to make the costs a charge against the county, and that the county is only liable for the costs of judicial proceedings when expressly made so by the Constitution or by statute, so when the costs are incurred in some suit or proceeding instituted or defended for or on behalf of the county itself.

1536 GARDNER vs. BOARD OF SUPERVISORS (Newaygo), No. 15363; 3 D. L. N., 323; 67 N. W., 1091. (Certiorari to Newaygo.)

To compel respondent to allow to him, as county clerk, certain charges.

The circuit judge denied the application. Affirmed July 8, 1896, with costs.

Held, that the disbursements were proper charges if the

account had been properly itemized, but the gross sum of \$25 for postage and express charges might well be rejected on account of indefiniteness; that as to the work done at the request of the state statistician there is nothing in the act providing for such office that makes it the duty of the county clerk to do this work, or the duty of the board to pay for it; that as to the claim for services rendered in the tax proceedings, there is nothing in the record to show that any work was done under the provisions of Act No. 206, of the Laws of 1893.

1537 STETSON vs. BOARD OF SUPERVISORS (Calhoun), 36 M., 9.

To compel the allowance of relator's claim for services performed by him during the year 1876, while he was county clerk.

Denied January 23, 1877.

Held, (1) under the statute (Comp. L., 1871, Sec. 470), a county clerk whose compensation has been fixed by the board of supervisors at a specified annual salary, is entitled to no additional compensation for services as clerk of the board of supervisors; (2) a county clerk whose salary has been fixed thus is not entitled to recover extra compensation from the county for services as clerk of the building committee, and in purchasing wood and trees, etc., except upon a showing of facts from which a contract for payment could be implied; and (4) that notwithstanding the statute allows the county clerk specific fees for services as clerk in criminal cases, drawing juries, recording births, deaths, etc., it is competent for the board of supervisors to make an allowance by way of annual salary which shall be in full for all services he is required as county clerk to perform, and where the board have undertaken to do this, and the clerk is made to understand that such is their design, he cannot afterwards lawfully make claim to extra compensation for any such services.

1538 CLEGG ET AL. vs. BOARD OF AUDITORS (Wayne), No. 13450, 96 M., 188.

To compel respondents to allow the claim of relators for examining the books and accounts of the county treasurer and board of auditors, under instructions of the board of supervisors.

Denied June 23, 1893, with costs, on the ground that the board of supervisors of Wayne County have no power to examine the books and accounts of the county treasurer and board of auditors of said county.

1539 WHEELER vs. BOARD OF PUBLIC WORKS (Muskegon), 12491.

To compel an allowance of relator's account as a physician, under 3 How. Stat., Sec. 1681 a.

Granted February 3, 1892, with costs.

1540 SCHNEIDER vs. CITY CONTROLLER (Detroit), No. 15260; 65 N. W., 559; 2 D. L. N., 759. (Certiorari to Wayne.)

To compel respondent to draw his warrant on the city treasurer for \$1,000 in payment of services alleged to have been rendered by relator to the board of health of said city, a claim for which having been allowed by the board at \$252, which amount relator refused to accept, but presented his claim to the Common Council, which body allowed it at \$1,000.

The circuit judge granted the writ.

Reversed December 24, 1895, with costs of both courts, on the ground that Act No. 19, Laws of 1895, vested in the board of health the sole authority to audit and allow such claims.

1540½ GOODSON vs. BOARD OF HEALTH (Detroit), No. 16364,
4 D. L. N., 605; 72 N. W., 185. (Certiorari to Wayne.)

To compel respondent to pay relator for extra services claimed to have been performed by him.

The circuit judge granted the writ. Reversed and writ denied September 14, 1897.

Held, (1) that mandamus is not the proper remedy to enforce payment of such claim.

(2) No contract relations having been entered into between relator and the health board in regard to these extra services, and relator having accepted his regular salary without making any claim to the board for extra services, and having accepted from such board a sum in payment of such services, will not be allowed a recovery.

(3) Under the charter of the City of Detroit the health commissioner has no authority to fix the hours of labor of employes of the board, to determine how many hours shall constitute a day's labor or to bind the city to pay therefor.

1541 ST. JOHNS vs. BOARD OF SUPERVISORS (Clinton), No. 15931;
3 D. L. N., 795; 70 N. W., 131. (Certiorari to Clinton.)

To compel the audit and payment of a claim of \$690 to the health officer of the village.

The circuit judge granted the writ. Affirmed, with costs, February 18, 1897.

On October 31, 1894, an epidemic of small-pox broke out in the village and the board of health, being the trustees of the village, increased the pay of its health officer, and this claim was for this increased compensation.

1542 SHERMAN (County Clerk) vs. BOARD OF SUPERVISORS
(Sanilac), No. 11639, 84 M., 108.

To compel the allowance of certain fees for issuing subpoenas

to delinquent tax-payers, under Act No. 195, Laws of 1889, and for moneys paid the register of deeds for services in his office to ascertain the names of said owners.

Denied December 24, 1890.

Held, that there is no provision of law entitling the clerk to such fees, nor is he required to make such searches; that the claim is not one which the respondent board can be compelled to audit and allow, although upon a proper showing the board may be required to act under Sec. 100 of said law, which provides that county officers shall be paid for services under this Act by salary or otherwise, as the board of supervisors shall determine.

1543 ROULO vs. BOARD OF AUDITORS (Wayne), 74 M., 129.

To compel respondent to allow to relator his statutory fees for reporting mortgages to the assessing officers, under Act No. 262, Laws of 1887. It being claimed that Act No. 321, Local Acts of 1879, providing for the compensation of certain officers of Wayne County, covered such services.

Granted February 15, 1889.

1544 HITCHCOCK vs. BLACKMAN (County Treasurer, Van Buren), 47 M., 146.

To compel payment of a sum claimed to be due relator as stenographer for the Circuit Court of that county.

Denied October 26, 1881.

Relator was appointed when the circuit was composed of Kalamazoo, Allegan and Van Buren counties, but afterwards Allegan was detached and the board of supervisors of Van Buren declined to pay its proportion of the salary which had been previously paid, but fixed the amount which should be paid by that county.

Held, that under the Act of 1871 the board was authorized to so fix the amount that should be paid for the service.

1545 LEE (Sheriff) vs. BOARD OF SUPERVISORS (Ionia), 68 M., 330.

To compel respondent to allow relator certain fees as sheriff.
Denied January 26, 1888.

The statute allows for every person committed to jail thirty-five cents, and the same sum for every person discharged, and for taking a prisoner before the court for examination or to jail fifteen cents. The board allowed thirty-five cents for each original commitment and for every final discharge, and fifteen cents for taking prisoners back and forth, but the relator claimed that he should have an additional thirty-five cents for every time the prisoner was taken to court, and the same sum when brought back, on the ground that each removal is a discharge and each return a commitment.

1546 CITY OF DETROIT vs. WAYNE COUNTY AUDITORS, 43 M., 169.

To compel respondent board to audit a claim for the maintenance of prisoners sentenced by the Records' Court of Detroit, to the Detroit House of Correction.

Granted April 7, 1880.

1547 VINCENT (Sheriff) vs. BOARD OF SUPERVISORS (Mecosta), 52 M., 340.

To compel the allowance of a claim of ten cents per mile for bringing back certain goods on a search warrant, a similar amount having been allowed for the service of the writ and traveling to the place of service, 93 miles, and for further charges of \$2.50 per day for attending court.

Denied December 21, 1883.

Held, that there is no statute under which the board could be compelled to allow the first named item, and that as to the second class of items, it does not appear that any court certificate, or other determination of the fact of attendance was pro-

duced, but it does appear that relator's attendance was in some instances, at least, colorable merely.

1548 ALLOR vs. BOARD OF AUDITORS (Wayne), 43 M., 76.

To compel respondent to audit relator's account for services, as constable, in the arrest of parties charged with the commission of crimes outside the City of Detroit, in Wayne County, upon warrants issued by justices of the peace of the City of Detroit.

Granted February 11, 1880.

1549 BOARD OF POLICE COMMISSIONERS (East Saginaw) vs. BOARD OF SUPERVISORS (Saginaw), 35 M., 91.

To require respondents to audit and allow a bill presented to them by relators, for services performed by one of the police officers in the pursuit and apprehension of a person charged with an offence against the laws of the State, committed within East Saginaw.

Denied, with costs, October 24, 1876.

1550 FOLLENSBEE (Sheriff) vs. BOARD OF SUPERVISORS (St. Clair), 67 M., 614.

To audit and allow relator's account, amounting to \$393, for services and disbursements in making service of a requisition in the State of Texas and bringing two fugitives from that State to Port Huron.

Denied November 10, 1887.

Relator did not act in his official capacity in performing the services, but performed them at the instance of private parties, and the governor, in the appointment, expressly provided that "the State was to be liable for no expense incurred in the pursuit and arrest of said fugitives."

1551 SIMPSON vs. BOARD OF SUPERVISORS (St. Clair), No. 12352½.

To compel payment of fees and expenses of relator, a deputy sheriff, for service in a distant county, of two warrants received from a justice of the peace.

Order to show cause denied November 18, 1891.

1552 ABELS vs. BOARD OF SUPERVISORS (Ingham), 42 M., 526.

To compel respondents to audit and allow certain claims for services as a detective, in the discovery and apprehension of a criminal.

Denied January 21, 1880.

Relator is a member of a private detective corporation, organized under Act No. 217, Laws of 1859, as amended by Act No. 55, Laws of 1873.

Held, that the Constitution contemplates that persons vested with the powers of constables shall be elective, and that the provisions of the act giving to its members the powers of constables are unconstitutional.

1553 BOARD OF METROPOLITAN POLICE vs. BOARD OF AUDITORS (Wayne), No. 12919, 93 M., 306.

To compel respondent to audit and allow an account for expenses incurred in the pursuit of a person charged with a criminal offense in the City of Detroit.

Granted October 12, 1892, without costs.

1554 CLARK vs. BOARD OF SUPERVISORS (Ingham), 38 M., 658.

To compel the allowance of certain claims made by a sheriff for the service of a warrant, void upon its face, and for travel fees on writs which were not served.

Denied April 16, 1878.

The board refused to receive or consider ex parte affidavits.

Held, that the board might receive such affidavits, but was entitled to legal evidence, if required by them; that there was no statute allowing fees for travel except in case of service, and that the return of the board was conclusive.

1555 TYLER (Sheriff) vs. BOARD OF SUPERVISORS (Oceana), No. 12917, 93 M., 449.

To compel the allowance of relator's bill for service rendered in serving a requisition.

Denied November 18, 1892, with costs.

The answer alleged that a third party undertook to pay and did pay relator for his expenses and services, and relator proceeded to a hearing without framing an issue.

Held, that the answer must be taken as true; Merrill vs. County Treasurer, 61 M., 95 (1447); Murphy vs. Township Treasurer, 56 M., 505 (1417); Hickey vs. Supervisors, 62 M., 100 (1530); Post vs. Township Board, 63 M., 324 (1249).

A motion was afterwards made and granted March 8, 1893, to re-open case and frame issues; the issues were settled and sent down for trial March 11, 1893.

1556 CITY OF GRAND RAPIDS vs. BOARD OF SUPERVISORS (Kent), 40 M., 481.

To compel respondent to audit and allow certain accounts presented to the city for police justices' and police officers' fees.

Granted, without costs, April 9, 1879.

1557 COVELL vs. COUNTY TREASURER (Kent), 36 M., 332.

To compel respondent to pay the fees of the jurors of the Superior Court of Grand Rapids.

The court held the county liable for such fees, and that

under the Constitution it was competent to establish a Superior Court, but the court did not deem it necessary to issue the writ. April 13, 1877.

1558 KNOX vs. COUNTY TREASURER (Wayne), 40 M., 62.

To compel respondent to pay fees for attendance on jury in the Superior Court of Detroit.

Granted January 8, 1879.

Held, that the statute makes jury fees, in courts of record having a seal, payable out of the county treasury and that the statute is applicable to the Superior Court of Detroit, citing *Covell vs. County Treasurer (Kent)*, 36 M., 332 (1557).

1559 STOWELL vs. BOARD OF SUPERVISORS (Jackson), 57 M., 31.

To compel payment of a bill for boarding and lodging jurors and the officers in charge during a portion of the time occupied in the trial of a murder case, the court having deemed it necessary to exclude the jurors, and after making inquiries as to terms, etc., had determined that they should be sent to relator's hotel, the respondent having refused payment on the ground that jurors are obliged to board themselves, and that the court has not power to create county charges.

Granted May 13, 1885.

Held, that such expenses are for the benefit of the State; are charged to the county by way of properly distributing the burden; that such claims are not under the exclusive control of the supervisors, and the same must be audited by the supervisors and paid by the county, if the trial judge has exercised his discretion in excluding the jurors and directing that they be lodged and boarded at a particular place.

1560 TUCKER vs. COMMON COUNCIL (Grand Rapids), No. 14555,
104 M., 621. (Certiorari to Kent.)

To compel respondent to allow relator's claim for the board of certain witnesses for the people in a criminal case. The circuit judge allowed the writ.

Reversed April 16, 1895, with costs.

Held, that the board of police commissioners has no power to contract for the board of a witness for the people while waiting to testify.

1561 CRONIN vs. BOARD OF SUPERVISORS (Kalkaska), 58 M., 448.

To compel respondent to allow a claim for the board of a prisoner confined in the county jail. The answer alleged that the prisoner was sent to the Reform School at Lansing, and referred to the records and files of the Circuit Court in support of the statement.

Relator filed a replication and the court was asked that an issue of fact be settled, and sent down to the court for trial.

Held, that a relator or respondent relying upon official records to establish his right must produce such records or certified copies thereof with his petition or answer; it is not enough to refer to the originals, and relator was given leave to withdraw his application and move the court anew, with costs to respondent.

1562 BARRY COUNTY vs. BOARD OF SUPERVISORS (Manistee),
33 M., 497.

To compel payment of the expenses of the trial of one charged with murder, which trial was had in Barry County under an order for a change of venue from Manistee County.

Denied April 11, 1876.

Held, that the constitutional provision giving to boards of supervisors the exclusive power to adjust all claims against

their counties includes such a claim; that any action of the board of the claimant county in auditing such bills, did not bind respondent, and that the respondent having voted to allow the claim under the erroneous impression that the action of the claimant in allowing the claim was binding had a right to reconsider such action.

1563 FARNSWORTH vs. BOARD OF SUPERVISORS (Kalkaska), 56 M., 640.

1564 ASKAN vs. BOARD OF SUPERVISORS (Kalkaska), 56 M., 640.

1565 ROWE vs. BOARD OF SUPERVISORS (Kalkaska), 56 M., 640.

To compel the allowance and payment of sums which have been allowed in favor of the relators by the board of health in smallpox cases, under Secs. 1647, 1650, 1655, How. Stat.

Denied May 13, 1885.

The court held that the question of the pecuniary ability of the patients themselves to pay was one of fact to be passed upon by the supervisors (Bristow vs. Supervisors, 3 M., 475-478 (1566), and having been decided adversely to relators, is conclusive in this proceeding, and with respect to other matters, the hearing having been had upon petition and answer, the applications were fully met by the answers which must be deemed to be true.

1566 BRISTOW vs. BOARD OF SUPERVISORS (Macomb), 3 M., 475.

To compel the board to allow the amount of a claim under R. S. 1846, Sec. 15, p. 163, for caring for a person infected with smallpox.

Granted 1855.

Notwithstanding Sec. 10, Art. X, of the constitution, mandamus will lie to compel the board of supervisors to do what the law unconditionally requires of them. The writ may be resorted to for the enforcement of private rights, when withheld by public officers, especially where by law, no other specific remedy is given.

**1567 KITTLE vs. BOARD OF HEALTH (Detroit), No. 16013½.
(Certiorari to Wayne.)**

To compel respondent to pay relator for extra services performed at a time when a smallpox epidemic was feared.

The circuit judge granted the writ. Writ of certiorari refused December 28, 1896.

**1568 SAFFORD vs. BOARD OF HEALTH (Detroit), No. 15415;
3 D. L. N., 314; 67 N. W., 1094. (Certiorari to Wayne.)**

To compel respondents to allow a claim in favor of relator, for the use of his hotel as and for a hospital, the destruction of infected property and the burial of a person who died therein of smallpox.

The circuit judge granted the writ. Affirmed July 8, 1896, with costs.

Held, that where no objection is made by counsel to the manner of framing an issue, and the case is presented upon its merits in the lower court, any objection as to the irregularity of the proceedings must be treated upon appeal as waived; that the verdict of the jury may be treated as advisory to the court; that compensation may be had by the party for services rendered and for property destroyed by direction of the board of health in case of pestilence or epidemic disease; that it is the duty of the board to pass upon the amount, and where they refuse utterly to award compensation, mandamus may be invoked to compel them to do so.

1569 DAVIS ET AL. vs. BOARD OF HEALTH (Howell), No. 13433½.

To compel payment of a claim for use of premises as a hospital for smallpox patients, where it is alleged that the board took possession of the house without the owner's consent, and the board allowed the claim at \$100, but it is insisted that the amount of the allowance is inadequate.

Order to show cause denied April 4, 1893.

1570 ELLIOTT vs. BOARD OF SUPERVISORS (Kaskaskia), 58 M., 452.

**1571 PAQUETTE vs. BOARD OF SUPERVISORS (Kaskaskia),
58 M., 452.**

**1572 TRENCHALL vs. BOARD OF SUPERVISORS (Kaskaskia),
58 M., 452.**

To compel allowance of claims under How. Stat., Sec. 1647, for nursing patients and for articles destroyed because infected. Granted November 18, 1885.

**1573 SENATE HAPPY HOME CLUBS vs. BOARD OF SUPERVISORS
(Alpena), No. 13852½.**

To compel the board to audit relators' bill for the cure of a person from the liquor habit, under Act No. 207, Laws of 1893.

Order to show cause denied Nov. 21, 1893, on the ground that the application should be made to the Circuit Court.

**1574 SENATE HAPPY HOME CLUBS vs. BOARD OF SUPERVISORS
(Alpena), No. 13906; 99 M., 117; 23 L. R. A., 144. (Certiorari
to Alpena.)**

To compel respondent to audit relators' bill for the cure of a

person from the liquor habit, under Act No. 207, Laws of 1893, popularly known as the "Jag Cure Act." The Circuit Court granted the writ.

Reversed February 20, 1894, on the ground that the act is unconstitutional.

1575 BEEKMAN (Reg. of Deeds) vs. BOARD OF SUPERVISORS (Eaton), No. 11737, 85 M., 584.

To compel the allowance of fees for reporting mortgages, under Sec. 5 of Act No. 262, Laws of 1887, relator claiming that he was entitled each year to ten cents for every mortgage appearing upon the district assessor's books.

Denied May 8, 1891, with costs.

1576 McBRIDE (Police Justice) vs. BOARD OF SUPERVISORS (Kent), 38 M., 421.

To compel respondent to audit and allow sums claimed to be due from the county to the city.

Denied April 2, 1878, on the ground that the police justice was not the proper party to enforce performance of the duty.

1577 McMAHON vs. BOARD OF AUDITORS (Wayne), 41 M., 223.

To compel the board to audit and refund a fine, the judgment under which it was imposed having been reversed on certiorari, and the fine having been paid to avoid imprisonment.

Denied June 17, 1879.

1578 SECORD vs. MAYOR AND COMMON COUNCIL (North Muskegon), No. 12916.

To compel payment of relator's claim for certain printing.

Order to show cause issued, return made and writ afterwards granted upon stipulation of the parties, October 5, 1892.

1579 BOARD OF METROPOLITAN POLICE vs. BOARD OF AUDITORS (Wayne), 68 M., 576.

To compel the respondents to pay the expense of patrolling certain territory in townships outside of the city of Detroit, under the liquor law of 1887.

Denied March 2, 1888.

1580 TOWNSHIP BOARD OF ECORSE vs. BOARD OF SUPERVISORS (Wayne), 75 M., 264.

To compel the board of supervisors to take action, under Act No. 62, Laws of 1889, providing for the construction of bridges over streams which form the boundary line between two townships.

Denied June 14, 1889, on the ground that the act does not apply to navigable rivers over which it would be necessary to construct a drawbridge, and maintain and manage the same during the season of navigation.

1581 DELTA LUMBER COMPANY vs. BOARD OF AUDITORS (Wayne) AND BOARD OF SUPERVISORS (Wayne), 71 M., 572.

To compel respondents to maintain and operate a bridge.

Denied October 19, 1888.

Held, that the care and supervision of all public highways and bridges is in the hands of the highway commissioners, and the record fails to show any liability on the part of Wayne County to maintain and operate the bridge in question.

1582 SHANAHAN (Highway Comr., Columbus) vs. SHINDLER (Highway Comr., Casco), No. 11952.

To compel a highway commissioner to build a bridge.

Denied, without prejudice, May 6, 1891.

Relator, highway commissioner of the township of Columbus, sought to compel respondent as highway commissioner of the township of Casco, to build a bridge under an agreement made some years before apportioning the highway. Negotiations had for some time been carried on between the township boards, and there was no allegation that any provision had been made for the expense of such construction.

1583 STITT (Highway Comr., Fulton) vs. CASTERLINE (Highway Comr., Essex.), No. 12141.

To compel respondent to meet with relator and act with reference to the construction of a bridge on line between townships.

Denied December 21, 1891, with costs.

The answer alleged that an agreement had been entered into some years ago between the townships, by the terms of which respondent was to keep in good repair a certain highway, and in consideration thereof relator was to keep in repair and maintain the bridge, and that respondent had performed its undertaking.

1584 TRAVIS vs. SKINNER (Commissioner of Highways, Cooper Twp.), 72 M., 152.

To compel respondent to repair a bridge, where by the return it appeared that, in his opinion, the cost of the same will exceed \$1,000.

Denied October 26, 1888.

Held, that under How. Stat., Sec. 1381, the opinion of the commissioner of highways as to the cost must prevail.

1585 PERRINE vs. TOWNSHIP BOARD (Hamlin), 48 M., 641.

To compel a township board to repair a public bridge.
Order to show cause denied April 5, 1882.

1586 GOODSELL ET AL. vs. POST ET AL. (Highway Comrs.), 30 M., 353.

To compel respondents to rebuild a bridge.
Denied October 15, 1874.

Held, that inasmuch as the expense involved exceeded \$1,000, there was no legal duty resting upon the commissioners.

1587 BELKNAP vs. BOARD OF SUPERVISORS (Arenac), No. 12572½.

To compel board to set aside a resolution providing for the change of the county seat, because of alleged fraud in the purchase of votes therefor.

Order to show cause denied March 1, 1892.

1588 McLAUGHLIN ET AL. vs. BURROUGHS (Pros. Atty.), No. 12538, 90 M., 311.

To compel respondent to make and attach to a petition for the removal of an alderman, a statement that, in his opinion, the case demands investigation as provided by How. Stat., Sec. 653.
Denied February 18, 1892.

1589 CAIN ET AL. vs. BROWN (Pros. Atty.), No. 15701; 3 D. L. N., 840; 70 N. W., 337. (Certiorari to Lapeer.)

To compel respondent to file an information in the nature of a quo warranto.

The circuit judge granted the writ. Reversed, with costs of both courts, March 10, 1897.

Held, "before a prosecuting attorney can be compelled to in-

stitute proceedings, at the instance of private citizens, to determine whether a municipal corporation has a legal existence, a prima facie case must be made out by affidavits of persons knowing the facts so clear and positive that perjury may be brought if any material allegation is false.

"The institution of such proceedings lies within the discretion of the attorney-general or prosecuting attorney.

"Inasmuch as municipal corporations can exist only by legislative sanction, they cannot be dissolved or cease to exist except by legislative consent or pursuant to legislative provision."

1590 ELDER ET AL. vs. GARNER (Sheriff), No. 13554, 97 M., 617.

To compel respondent to bring relators, who were committed for trial upon a charge of murder, before a circuit court commissioner, to the end that they might be admitted to bail.

Denied, with costs, June 8, 1893, on the ground that the answer sets forth that the commissioner is disqualified.

1591 TURNER Pros. Atty.) vs. SMITH (Sheriff), No. 12537, 90 M., 309.

To compel respondent to obey a mandate of commitment.

Denied February 10, 1892. Opinion filed February 16, 1892.

1592 BEECHER vs. ANDERSON (Sheriff), 45 M., 543.

To compel respondent to serve a criminal warrant.

Denied April 13, 1881.

Held, that the complaint was defective; also that the party in interest is entitled to be heard in opposing an application for the writ in such case.

1593 WHEATON vs. WHITTEMORE ET AL., 49 M., 348.

The discretionary act of denying a writ of mandamus to compel a sheriff to execute a criminal warrant does not necessarily determine the invalidity of the warrant.

1594 DUNKLEE vs. BRENNER (Sheriff), No. 14080. (Error to Washtenaw.)

To compel respondent to proceed and sell certain real estate upon a judgment, execution and levy.

The circuit judge granted the writ. Affirmed, without costs, April 3, 1894.

Relator obtained judgment, execution issued and a levy was made. A new trial was granted and in the order granting the same it was provided "that the levy heretofore made under and by virtue of the execution heretofore issued in this cause, be and the same is hereby allowed to stand."

Upon the second trial relator again obtained judgment and the judgment entry recited the former levy and provided for proceedings under it.

In the meantime the defendant had conveyed the property to his wife.

A sale was advertised under the levy for a day certain, but no bidders appearing, an adjournment was had, but apprehensive that his proceedings under the levy were void, the sheriff refused to proceed.

1595 WAITE vs. WASHINGTON (Sheriff), 44 M., 388.

To require respondent to imprison a person convicted under the bastardy act, when necessary to compel him to contribute to the child's support.

Granted October 19, 1880.

Held, that in such case the mother is a proper relator.

1596 ROGERS (HEALTH Officer) vs. McNAUGHTON (Sheriff),
No. 15477½.

To compel the sheriff to deliver to relator a prisoner, who is suffering from diphtheria, for the purpose of removal to the hospital, there to be kept and cared for until her recovery, and then to be returned.

The circuit judge denied the application, on the ground that relator was not the health officer of the village, but that another was both de jure and de facto such health officer.

Writ of certiorari refused.

1597 MILLER vs. STRABBING (Sheriff), No. 12783.

To compel relator's release from imprisonment under the poor debtor's act.

Denied, with costs, June 15, 1892.

In case for slander commenced by capias, judgment was rendered against relator, and a body execution issued, whereupon he gave a bond for the jail limits and was released from custody. He now claims the benefit of Chap. 309, How. Stat., and asks that the sheriff be compelled to take steps for his discharge.

Held, that the latter chapter has no application to such a case.

1598 BENNETT ET AL. vs. HANLEY (Sheriff), No. 12625, 91 M., 143.
51 N. W., 885.

To compel respondent to set off an execution.

Granted, without costs, April 7, 1892.

1599 REED vs. COOTS (Sheriff), 43 M., 321.

To compel the sheriff to set off against each other certain executions in suits between one Baker and relator, where Baker's attorney had served notice upon respondent of a claim of lien on the judgment in favor of Baker exceeding it in amount.

Denied April 21, 1880.

Held, that the sheriff has no judicial power to fix the amount of an attorney's lien upon a judgment.

1600 LAWRENCE vs. HANLEY (Sheriff), No. 11740, 84 M., 399.

To compel respondent to return to relator, as chairman of the board of auditors of Wayne county, the books belonging to said board, where a conflict has arisen, respecting the title to the office of county auditor, between an appointee of the governor and one holding over because of the death of an auditor-elect, and the sheriff had taken sides, seizing the books of the office.

Granted, with costs, January 23, 1891; holding that the appointee of the governor was not entitled to the office, and that, although title to office will not usually be settled in mandamus proceedings, where a person in office de jure and de facto is interfered with by one whose lack of title is plain under adjudicated cases in our own courts, it is proper and best to settle the question by mandamus.

1601 BENEDICT vs. CONNINE (Pros. Atty.), No. 12324½.

To compel respondent to indorse the names of certain witnesses for the people, upon an information.

Order to show cause denied November 18, 1891.

1602 BLACK vs. BAKER (Clerk Justice Court), No. 11784½.

To compel respondent to issue a summons and make same returnable before some justice other than Justice Phalen.

Order to show cause denied February 24, 1891.

Plaintiff signed a praecipe for a summons returnable before some one of the justices other than Justice Phalen, giving as a reason that she desired to call Mr. Phalen as a witness upon the

trial. Act No. 28, Local Acts of 1883, Am., 1885, p. 58, requires the clerk to make all writs returnable before the justices in regular rotation, and does not give the clerk power to make exceptions.

1603 GIBSON vs. CLERK OF CIRCUIT COURT (Bay), 14 M., 168.

To compel clerk to issue an execution
Granted April 10, 1866.

1604 WRIGHT vs. CLERK CIRCUIT COURT (Huron), 48 M., 642.

To compel respondent to return files of the Supreme Court, which had been remitted to him by mistake.

Denied June 9, 1882.

Held, that a simple order from the Supreme Court was sufficient to compel the return as in such case the Supreme Court retains authority over the papers, and mandamus is not a proper remedy.

1605 SCRIBNER vs. GAY, 5 M., 511.

The court has power to compel the correction of records transmitted to it from inferior tribunals, by mandamus.

**1606 McKNIGHT ET AL. vs. TURNER (Clerk Circuit Court),
No. 15478.**

To compel respondent to make return to the Supreme Court on appeal taken, the answer showing that the fees therefor had not been paid within the statutory time.

Denied, with costs, March 24, 1896.

1607 ATTORNEY GENERAL vs. BOARD OF SUPERVISORS
(Benzie), 34 M., 211.

To set aside and vacate certain action recently taken by respondents at Benzonia, which place the board recognized as the county seat.

Denied June 7, 1876.

The county seat was originally located at Frankfort, but the question of the removal to Benzonia was several years since submitted to a vote of the people. Upon canvass of the vote the proposition was declared carried. Two or three years later the supervisors assumed to reconsider this action and to declare the proposition not carried, but this last action was clearly invalid and the board was, therefore, warranted in treating it as void.

1608 HARRINGTON (Pros. Atty.) vs. WANDS (Co. Clerk), 23 M., 384.

To compel respondent to maintain his office at the city of Port Huron, to which place relator insisted that the county seat had been removed.

Granted October 4, 1871.

1609 DELBRIDGE vs. GREEN (County Clerk and Register of Deeds),
29 M., 120.

To compel respondent to keep his offices at Frankfort instead of Benzonia.

Denied April 7, 1874.

Held, that the writ would not, in such case, issue at the instance of a private individual, in the absence of any showing of a refusal by the proper public officer, upon request, to make the application, or that relator has any special interest in the matter not common to citizens generally. The proper public officer to apply in such case is the attorney-general.

1610 HOLBROOK vs. CITY TREASURER (Detroit), 8 M., 14.

To compel respondent to receive from relator, who is the owner of an undivided interest of a lot in the city of Detroit, which had been sold for city taxes, a proportionate amount of the whole tax and cancel the sale as to such undivided interest.

Granted January 5, 1860.

1611 RICE (Pros. Atty.) vs. SHAY (County Treas.), 43 M., 380.

To compel the county treasurer to keep his office at the county seat where located according to law.

Granted April 28, 1880.

1612 FLETCHER ET AL. vs. MORRELL (ex-Sheriff), 78 M., 176.

To compel respondent to turn over to his successor, goods taken by him during his term of office under an attachment.

Granted November 15, 1889.

Held, that it is the duty of the ex-sheriff who has attached property in his custody, after execution has been issued, to expose such property to the sheriff when requested, in order that it may be taken in execution and sold to satisfy the same; that if he has valid charges he should make out his bill and present it to the clerk or other taxing officer for taxation, or if they are not statutory fees, he should apply to the court for such allowance upon motion and notice to the parties interested. He has no right arbitrarily to fix his own price, and retain the property until paid.

Held, also, that the right of an ex-sheriff to execute process until the service upon him of the clerk's certificate required by How. Stat., Sec. 597, showing that his successor has qualified and given the security required by law, exists only as to such process as he has in his hands, and which he is required by How. Stat., Sec. 599, to deliver to his successor upon service of such certificate.

1613 FLINT & PERE MARQUETTE RAILWAY CO. vs. COUNTY TREASURER (Saginaw), 32 M., 260.

To require respondent to accept moneys tendered him for redemption of lands sold for taxes.

Granted June 15, 1875.

The amount tendered was the sum for which the lands were sold, with interest at the rate of twenty-five per cent, in accordance with the provisions of the tax law, as amended by the act of 1875, but the treasurer declined to receive it on the ground that the act as it stood before the amendment required the payment of interest at fifty per cent, and that as these lands were sold for the taxes before the amendment, the original act and not the amended one was applicable.

1614 TOWNSHIP OF PIERSON vs. TOWNSHIP BOARD (Reynolds), 49 M., 224.

To compel a meeting of the township board of Reynolds jointly with the township of Pierson (of which township of Pierson the township of Reynolds once formed a part), to apportion certain alleged liabilities of the old town which it is claimed should be divided between the two townships, but which have never been so divided.

Denied October 11, 1882.

Judgment was recovered against the town of Pierson in the United States Court on bonds known as railroad aid bonds, issued by the township of Pierson. The bonds were voted in January, 1868, and the new township was organized in March, 1869, and it was insisted that the vote created a liability against the entire territory.

1615 SCHMEDDING (Press Reporter) vs. MAY (County Clerk), No. 11736, 85 M., 1.

To compel respondent to submit to relator (a press reporter)

certain files, records and books in the county clerk's office for inspection.

Denied, with costs, February 27, 1891.

1616 KITTLE vs. WOODWARD (County Clerk and Register of Deeds; Osceola), No. 14437.

To compel respondent to allow relator, an attorney-at-law, to examine the records and files in respondent's office; to enter motions or orders in the motion and order books; to receive and file and record cases, and to grant to relator the rights and privileges to which he is entitled as an attorney.

Application filed August 2, 1894.

Order to show cause granted October 3, 1894.

Writ granted, in the absence of return, with costs, October 23, 1894. The petition set forth that the Circuit Court was not in session and that no term of court would be held in that county until January next.

1617 WEBBER ET AL. vs. TOWNLEY (Register of Deeds), 43 M., 534.

To compel respondent to permit relators to inspect, copy and abstract public records, files and papers in the office of the register, subject to reasonable rules and regulations.

Denied June 9, 1880.

1618 DIAMOND MATCH COMPANY vs. POWERS (Register of Deeds), 51 M., 145.

To compel respondent to permit relator to have access, so long and so far as it is found necessary, to the records of the office.

Denied June 22, 1883.

The remedy by mandamus contemplates the necessity of indicating the precise thing to be done; it is not adapted to cases calling for continuous action, varying according to circumstances.

Obedience to the writ of mandamus is enforceable by process for contempt.

1619 BURTON vs. TUIITE (City Treasurer), 78 M., 363, 7 L. R. A., 73-824.

To compel respondent to allow relator to examine and have access to certain records in the city treasurer's office, in compliance with Act No. 205, Laws of 1889.

Granted December 28, 1889.

Respondent was afterwards adjudged guilty of contempt by reason of disobedience of the writ, 80 M., 218.

1620 DAY vs. BUTTON (Register of Deeds), No. 13593.

To compel respondent to furnish to relator proper and reasonable facilities for the inspection and examination of the records and files in respondent's office, and for making memoranda or transcripts therefrom, provided for by Act No. 205, Laws of 1889.

Granted, with costs, June 28, 1893, ruled by No. 1619.

1621 BURTON vs. REYNOLDS (County Clerk, Wayne), No. 15476; 3 D. L. N., 447; 68 N. W., 217.

To compel respondent to permit relator, who is engaged in the business of making abstracts of titles to land, to inspect, examine and copy from file No. 8982, and from any other files in his office.

The circuit judge denied the writ. Affirmed, with costs, July 28, 1896.

Held, that until a case has been before the court for some judicial action, the files and records therein are not public records, and that there was no showing for such a necessity as established a legal right to inspect the record referred to.

1622 BURTON vs. COUNTY CLERK (Wayne), No. 14213, 102 M., 55.
(Certiorari to Wayne.)

To compel respondent to give relator access to the files and records of all suits pertaining to real estate, to enable him to make abstracts of the same to use in his business of making and selling abstracts of title. The circuit judge denied the writ. Affirmed September 25, 1894, with costs.

Relator sought to obtain privileges to which the general public are not entitled.

1623 AUSTIN vs. CURTIS (Register of Deeds), 41 M., 723.

To compel the register of deeds to record a deed delivered to him in escrow and withheld by order of the grantor.

Denied October 21, 1879.

Held, that the grantee in the deed should establish his right by bill in equity or other proper proceeding against the grantor, and further that relief cannot be given as against the interests of any person not made a party and not duly notified.

1624 LONGYEAR (County Treasurer) vs. BUCKS (City Treasurer, Lansing), 83 M., 236, 10 L. R. A., 43.

To compel the payment over of certain moneys in respondent's hands, arising from the tax on dogs, under Act No. 214, Laws of 1889.

Granted Nov. 14, 1890.

The case involved the constitutionality of the act referred to.

1625 VAN HUSAN vs. HEAMES (Register of Deeds, Wayne), No. 13588, 96 M., 504.

To compel respondent to record a deed without the tax certificate provided for by Section 135 of Act No. 206, Laws of 1893.

Denied June 30, 1893, without costs.

1626 WIDNER vs. RAYBORN (Co. Treas., Alpena), No. 13387.

To compel respondent to issue a deed of certain lands, bid in by the State upon sales thereof for taxes, for the purchase of which relator had applied, but before he had made any tender or payment thereon, the parties owning the lands at the time of the tax levy tendered and paid in the amount of the taxes, costs and charges and demanded a deed.

Order to show cause issued, but petition withdrawn at the hearing May 31, 1893.

1627 BACKUS vs. CARLETON (County Treasurer, Wayne), No. 13753½, 97 M., 624.

To compel respondent to issue to relator a tax certificate provided for by Sec. 135 of Act No. 206, of the Laws of 1893.

Order to show cause denied October 3, 1893, on the ground that as the circuit judge had refused to act upon the application, the application here should be for a mandate to compel him to act.

1628 BACKUS vs. CARLETON (County Treasurer, Wayne), No. 13937, 99 M., 218. (Certiorari to Wayne.)

To compel respondent to issue to relator a tax certificate under Sec. 135, Act No. 206, Laws of 1893, without the payment of a fee therefor. The circuit judge granted the writ.

Affirmed February 27, 1894, without costs.

1629 BOARD OF AUDITORS (Wayne) vs. CARLETON (Co. Treas.), No. 13274.

To compel respondent to turn over certain tax abstract books, which had been purchased by relators from a former treasurer, and from which respondent claimed the right to make abstracts as applied for, and to charge a fee therefor, relators having appoint-

ed an abstract clerk to have charge of that business, whose duty it was to turn over all fees received into the county treasury.

Granted January 18, 1893, with costs.

1630 BOARD OF EDUCATION (Port Huron) vs. RUNNELS (City Treasurer), 57 M., 46.

To compel respondent, ex-officio treasurer of relator, to deposit the school moneys in a bank which relator had designated as the depository of its moneys.

Granted May 13, 1885.

The bank had applied, but the court had denied the writ, holding that mandamus does not lie to enforce a contract. But held that mandamus lies at the instance of the board; that the moneys as received are at once payable to the designated depository and that the treasurer could not go behind the records of the board, which on their face were valid action, for the purpose of avoiding the performance of his duty.

1631 CITY SAVINGS BANK vs. HUEBNER (County Treasurer), No. 11716, 84 M., 391.

To compel respondent to deposit with it certain county funds under a contract between relator, the county auditors and relator's predecessor, under Act No. 203, Local Acts 1879.

Granted, on the ground that the designation so made was good until a new depository be designated by the treasurer and the board of auditors, January 14, 1891.

1632 TOWNSHIP BOARD (Beaver Creek) vs. HASTINGS (Twp. Clerk), 52 M., 528.

To compel respondent to enter upon the records of the township the proceedings of a meeting of the board.

Denied January 29, 1884, on the ground that the meeting at

which the proceedings were claimed to have been had was not a legal meeting, as all the members of the board were not present and the proper notice of the meeting was not given.

1633 AITCHESON vs. HUEBNER (County Treasurer), No. 12540, 90 M., 643.

To compel respondent to issue to relator tax deeds for certain lands and to permit relator to inspect and examine the State Land Tax Book, and copy therefrom.

Granted in part March 18, 1892, with costs directing respondent, subject to the provisions of Act 205, Public Acts 1889, to furnish to relator at all times during business hours, proper and reasonable facilities for the inspection and examination of the State land tax book, and permit him to make memoranda therefrom.

1634 TYLER (Highway Comr., Dover) vs. BRIGGS (Highway Comr., Madison), No. 11988.

For a mandamus to compel the vacation of an order discontinuing a highway.

Denied May 20, 1891.

An alleged highway existed between townships of Dover and Madison, but deflected into latter township to avoid a swamp. Respondent discontinued so much of said way as lay wholly within Madison. Answer denies that the deflected portion of the road was a town line road, but avers that it was opened and maintained by Madison.

1635 LUCAS vs. SPENCER (Highway Comr.), No. 13295.

To compel the discontinuance of a highway.

Denied March 8, 1893, with costs.

The answer alleged that the highway was a State road.

1636 WHITE vs. HIGHWAY COMMISSIONER (Leonidas), No. 13386.

To compel respondent to proceed under Secs. 1371 to 1376, How. Stat., for the removal of alleged encroachments by abutting owners upon the highway.

Denied April 7, 1893, with costs, on the ground that it appeared from the return that the respondent, acting in good faith, had investigated the matter, and had concluded that the alleged encroaching fences had occupied substantially the same place for over 20 years, and did not encroach.

1637 ALDER vs. BUTLER (County Drain Comr.), No. 12809.

To compel respondent to proceed against petitioners for a drain, to recover expenses incurred in connection therewith.

Denied June 15, 1892, with costs.

Alder was county drain commissioner in 1888, and received an application for the construction of a drain. After he had made application to the Probate Court for the appointment of special commissioners to determine the necessity for taking private lands for the drain, his term of office expired, and the proceedings were continued by his successor. After the contracts for construction had been let and the work partially done, proceedings were instituted and further work enjoined.

Respondent afterwards succeeded to the office and insists that no request has ever been made to him to bring such suit, and that, under Sec. 1, Chap. 3, Act No. 227, of the Laws of 1885, the drain commissioner, having determined that the drain was a necessary public improvement, the liability of the persons petitioning therefor ended. *Hall vs. Palmer*, 54 M., 270.

1638 PFANNER vs. PENNEY (Drain Comr.), No. 13388.

To compel respondent to proceed to let certain contracts for cleaning out, deepening, widening and extending a certain drain and make an assessment therefor.

Denied April 4, 1893, without costs.

The answer alleged that respondent had resigned the office of drain commissioner March 9, 1893, and that another had been appointed in his stead.

1639 CONELY vs. BUTLER (County Drain Comr.), No. 12809½.

To compel completion of drain.

Order to show cause denied May 11, 1892.

It appeared that petitioner had been drain commissioner and had instituted proceedings for the construction of a drain, and after the work had been let, and a portion of the drain constructed, a bill had been filed and a temporary injunction obtained, which, upon hearing, was made permanent, restraining the further prosecution of the work.

Respondent succeeded to the office. Petitioner contended that because a part of the drain had been constructed it is the duty of the present commissioner to "relay, re-establish and re-assess" it, while respondent's contention is, that he must institute a new proceeding.

1640 FENTON METALLIC MANUFACTURING COMPANY vs. SOLOMON (Chairman) AND HARVEY (Clerk of the Board of Supervisors, Kent), No. 12475.

To compel respondents to execute a contract with relator for furnishing metal vault fixtures for court house.

On the return day permission given to withdraw petition on payment of costs.

1641 SULLIVAN (Drain Comr., Ralsinville) vs. TINSMAN (County Drain Comr.), No. 11953.

To compel a county drain commissioner to consider an application for deepening and widening a drain.

Granted May 19, 1891, without costs.

Relator, one of the petitioners, was county drain commissioner, of the township through which the drain ran. Respondent refused to act, claiming that he had no jurisdiction.

Relator insisted that respondent had concurrent jurisdiction with the township drain commissioner under Section 4, Chap. 2, Act No. 227, Laws of 1885, and that the word "may" in Sec. 1 of Chap. 8, should not be construed to mean "shall;" that Sec. 2 of Chap. 3, provided for a transfer of the application, in case of interest, to the county commissioner, and that there was no such provision respecting proceedings to open and widen a drain; that a township commissioner cannot act when interested. *Stockland vs. White Lake*, 22 M., 341; *Zabel vs. Harshman*, 68 M., 273.

1642 TYLER vs. TOWNSHIP BOARD (Greenfield), No. 11776.

To compel respondents to vacate an order setting aside the proceedings of a commissioner of highways in opening a highway, and to proceed to hear and determine certain appeals to said board in said matter.

Granted February 25, 1891, without costs.

Relator was one of the petitioners for the road, and contended (1) that no proper notice of the hearing of the appeals had been given by said board, and (2) that the appeals raised but one question, viz: the sufficiency or insufficiency of the damages awarded to appellants, and that no hearing was had upon that question, but the board went beyond the ground stated, and set aside the proceeding for other reasons, citing *Tefft vs. Hamtramck*, 38 M., 558.

**1643 BROWN vs. TOWNSHIP BOARD (Greenfield), No. 12810,
92 M., 294.**

To compel hearing of proofs on appeal from an order laying out a highway.

Granted June 10, 1892, with costs.

The board declined to hear the proofs, for the reason that no special grounds for the appeal were stated therein.

**1644 McDONALD vs. SUPERINTENDENTS OF THE POOR (Wayne),
No. 12778.**

To compel respondents to proceed in the Circuit Court for her relief and maintenance, under Sec. 1742, How. Stat.

Denied, without costs, May 11, 1892.

The answer alleged that relator had never requested respondent to apply in her behalf to the Circuit Court; that all of relator's dealings had been with the board of poor commissioners for the city of Detroit for aid, relief or maintenance; nor is she a public charge or liable to become such, and that her children did not refuse or decline to give her support, maintenance or relief.

**1645 HAMMOND (Deputy Secretary of Public Instruction) vs. BOARD
OF EDUCATION (Muskegon), No. 15457. (Certiorari to
Muskegon.)**

To compel respondent to collect the teachers' institute fees, provided for by 3 How. Stat., Sec. 5187.

The circuit judge denied the writ, on the ground that the act is unconstitutional.

Reversed and writ granted June 30, 1896, without costs.

**1646 GIGNAC vs. BOARD OF SCHOOL EXAMINERS (Wayne),
No. 11612.**

To compel respondents to issue a third-grade teacher's certificate to relator.

Denied January 14, 1891, with costs.

The petition avers, that such a certificate was issued to relator in 1887, again in 1888, and again in 1889; that on March 6, 1890, she again applied and was examined; that such examination was deemed satisfactory, and so determined, but the secretary of said board refused to issue said certificate.

The answer alleges that such examination was not deemed and had not been determined satisfactory; that relator failed to pass the examination in March, 1890, and thereupon a special

certificate or license to continue teaching was granted to, and accepted by her, with the condition that she appear for further examination April 26, 1890; that said special license was extended to August 7, 1890, and again to September 20, 1890; then to October 18, 1890, and again to November 29, 1890, upon the like condition; that she did appear in August, 1890, but again failed, and did not thereafter appear, but filed the petition herein November 11, 1890.

1647 HALE vs. RISLEY (Moderator), 69 M., 596.

To compel respondent to bring suit on an assessor's bond for breach of its conditions, in paying an order issued to an alleged unqualified teacher.

Denied April 24, 1888.

Held, that the writ will not be allowed where it is apparent that it is applied for to gratify the spite of a private individual; nor where the relator has instigated, authorized or approved the act complained of.

1648 KENDALL vs. BOARD OF EDUCATION (Grand Rapids), No. 15080, 106 M., 681. (Certiorari to Kent.)

To compel respondent to rescind its action in adopting a text book.

Petition demurred to. The circuit judge sustained the demurrer. Affirmed October 22, 1895, with costs.

The rules of the board provide that no text book shall be adopted which has not been proposed at a regular meeting at least one month previous to its adoption. In January, 1895, a member of the board gave notice that he would at some future time present said text book. It was afterwards presented and referred to a committee who reported August 3, 1895, recommending the adoption of the book. A motion was made to lay

the report on the table—yeas 6, nays 15. A motion to adopt resulted in 13 yeas and 8 nays.

Relator contended that the board was, under the statute, compelled to adopt rules, with reference to change of text books, and that the rule referred to was violated.

It appeared, however, that one of the rules provided that any rule may be suspended by a vote of two-thirds of all the members present, and the court held that by the vote had upon the motion to lay upon the table the rule requiring the lapse of thirty days was suspended.

1649 JONES vs. BOARD OF EDUCATION (Detroit), No. 12289, 88 M., 371.

To compel the board to continue the use of certain text books.

Granted November 13, 1891, with costs.

Peremptory writ issued January 11, 1893.

1649½ BISHOP vs. LAMBERT (Mayor, Wyandotte), No. 16358, 4 D. L. N., 501; 72 N. W., 35. (Certiorari to Wayne.)

To compel respondent to rescind his action declaring a motion, made in the common council, carried.

The circuit judge denied the writ. Affirmed July 22, 1897.

1649½ TENNANT vs. CROCKER (Mayor, Mt. Clemens), No. 11384, 85 M., 328.

To compel respondent to reverse his decision in declaring a resolution authorizing the purchase of certain land, carried, and to declare it lost.

Denied April 24, 1891.

(1) Whether land is a public highway by user or not will not be decided in mandamus proceedings.

(2) It is within the province of the Supreme Court to restrain

public bodies and officers of the municipal divisions of the State from exceeding their jurisdiction, and to require them to perform such specific duties as the law imposes upon them (Attorney-General vs. Board, 64 M., 607; Coll vs. Board, 83 Id., 367); and the writ has often been exercised to compel such bodies or officers to reverse their decisions (People vs. Supervisors, 3 M., 475; People vs. Auditors, 13 Id., 233).

(3) The writ of mandamus is a discretionary one, and will not be issued in all cases, even where a prima facie right to relief is shown; but regard will be had to the exigency which calls for an exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing upon the particular case.

Held also, that the decision did not involve the exercise of discretion, but was ministerial; that the action of the mayor was illegal; that no valid contract could be entered into under the resolution; that no injury can arise to the city on account of the action complained of; that the performance of the act prayed for would be merely prefatory, adding nothing to the legal status of the record and that the writ will not be granted to compel the performance of an idle ceremony.

1649~~4~~ BOARD OF AUDITORS (Wayne) vs. BOARD OF SUPERVISORS (Wayne), No. 16363; 4 D. L. N., 480; 72 N. W., 19. (Certiorari to Wayne.)

To compel respondent to rescind a resolution providing for a committee to supervise the work of constructing a county building.

Denied July 16, 1897, on the ground that the act giving to relators the power to supervise the construction of county buildings, was in conflict with Sec. 9, of Article 10, of the constitution.

1650 GUTHARD ET AL. vs. KRONBERG (City Clerk), No. 11777.

To compel respondent to certify, record and publish certain ordinances.

Denied February 11, 1891.

The charter of the city of Detroit provides for 32 aldermen, and requires a majority vote of all the aldermen elect to pass an ordinance. One of the aldermen had been elected state senator, and the common council had declared his seat vacant.

Petitioner insisted, that under the circumstances, 16 aldermen constituted a majority of the aldermen elect; that at the meeting of the common council, 16 aldermen were present, and by a unanimous vote adopted the ordinance in question. Respondent answered that 16 aldermen were not present at the meeting at which the said ordinance is alleged to have been adopted; that one of the persons counted to make up the 16 was not an alderman; that another of said persons had been an alderman, but had removed from the ward electing him, and that his seat was vacated thereby; that a large amount of other business had been attempted at such meeting, the most of which had been since re-considered, re-passed and re-enacted; that the ordinance in question related to the control of the new municipal building, which since its completion had been, and is now, under the charge of the controller, and that all the offices and positions in said building had been filled, and the work therein was being performed by such appointees.

1651 FRENCH vs. COMMON COUNCIL (So. Haven), No. 11775,
85 M., 135.

To compel the removal of certain obstructions in an alleged highway in respondent village.

Denied February 27, 1891, with costs.

The obstructions were placed in the street by a third party, a stranger to the record, who claims to own the land therein and who denied the existence of a legal highway.

The court found it difficult to determine upon the petition and return whether or not there is a highway, and as relator has an ample remedy in equity and at law, the writ is denied.

1652 CITY OF DETROIT vs. BOARD OF WATER COMMISSIONERS,
No. 15246; 66 N. W., 377; 2 D. L. N., 915. (Certiorari to
Wayne.)

To compel the board to supply water to the Detroit House
of Correction free of charge.

The circuit judge granted the writ.

Reversed March 3, 1896, with costs of both courts.

1653 CAMPAU vs. BOARD OF PUBLIC WORKS (Detroit), No. 11989,
86 M., 372.

To compel the approval of a plat presented by relator, and to
compel the vacation of a plat presented by another.

Granted as to the plat presented by relator, and the vacation
of the other plat denied June 5, 1891, without costs.

1654 COMMON COUNCIL (Detroit) vs. BOARD OF PUBLIC WORKS
(Detroit), No. 11989½.

To compel approval of plat submitted by Louis P. Campau.
(See preceding case.)

1655 VAN HUSAN vs. BOARD OF PUBLIC WORKS (Detroit) AND
HEAMES (Register of Deeds), No. 12501.

To compel the Board of Public Works to approve, and the
register of deeds to record, a plat.

Denied February 3, 1892, with costs.

The plat showed streets and alleys running north and south,
and lots within the lines of east and west proposed streets not
yet opened. See No. 1705.

1656 VAN HUSAN vs. BOARD OF PUBLIC WORKS (Detroit) AND REGISTER OF DEEDS (Wayne), No. 12719, 91 M., 519.

To compel the Board of Public Works to approve a plat, and the register of deeds to record same.

Granted May 11, 1892, without costs.

1657 LOTHROP (Admr.) vs. BOARD OF PUBLIC WORKS (Detroit), 41 M., 724.

To compel approval of a plat.

Denied October 22, 1879.

Held, that an administrator cannot make a public plat of lands under a probate license to sell them.

1658 LAFFERTY vs. BOARD OF PUBLIC WORKS (Detroit), No. 12028.

To compel approval of plat.

Denied July 1, 1891, with costs.

A belt of property lying between Twelfth street and Wabash avenue, running from Grand River avenue northerly to the L. S. & M. S. railway tracks had been platted for many years, and had been settled and improved. Thirteenth street divided the strip. Some fourteen streets ran easterly and westerly through the strip. The plat presented was of that portion of the strip lying west of the alley immediately east of Thirteenth street, and lying west of the alley immediately west of Thirteenth street. It proposed to open new streets and close old ones within the lines of the proposed plat, leaving many lots on the old streets between Twelfth and Wabash avenue, and not within the strip, without access to Thirteenth street.

1659 COMMON COUNCIL (Detroit) vs. PUBLIC LIGHTING COMMISSION, No. 14199, 101 M., 362. (Certiorari to Wayne.)

To compel respondent to submit to the council for its

approval or disapproval certain contracts entered into by the commission for the purchase of appliances necessary to the establishment of a public lighting plant.

The circuit judge denied the writ.

Reversed, and writ granted, July 5, 1894, without costs.

1660 ELECTRIC RAILWAY CO. vs. COMMON COUNCIL (Grand Rapids), No. 11569, 84 M., 257.

To compel respondent to proceed and approve of the kind and pattern of poles to be used by relator.

Denied December 24, 1890, with costs, it appearing that respondent had voluntarily done what was asked.

1661 SPEED vs. COMMON COUNCIL (Detroit), No. 13751, 97 M., 198.

To compel respondent to approve relator's bond as city counselor, in a case where the mayor of the city attempted to recall the appointment.

Granted October 24, 1893, without costs.

Application for rehearing denied January 5, 1894, with costs.

1662 CLARK vs. MAYOR AND COMMON COUNCIL (West Bay City), No. 15983; 4 D. L. N., 8; 70 N. W., 581. (Certiorari to Bay.)

To compel respondent to enter into a contract with relator for city printing, for which bids had been requested and received; it appearing that the contract had already been let to another party and the work partly performed.

The circuit judge granted the writ. Reversed and order vacated, with costs of both courts, April 6, 1897.

1663 GRANT vs. BOARD OF PUBLIC WORKS AND COMMON COUNCIL OF THE CITY OF DETROIT, No. 12334, 91 M., 274.

To compel the council to confirm a contract entered into between relator and the Board of Public Works and the board to proceed with the work.

Denied April 8, 1892, with costs.

1664 TALBOT PAVING COMPANY vs. COMMON COUNCIL OF THE CITY OF DETROIT, No. 12095, 91 M., 262.

To compel respondent to ratify and confirm a contract for paving.

Denied April 8, 1892, with costs.

In this cause an amended answer was filed. Issues were framed, settled and sent to the Wayne Circuit for trial. After trial a bill of exceptions was settled, filed and case noticed for argument.

1665 COMMON COUNCIL (Grand Rapids) vs. BOARD OF PUBLIC WORKS (Grand Rapids), No. 13762, 99 M., 392. (Certiorari to Kent.)

To compel respondent to proceed with the pavement of a street in the manner directed by a certain resolution adopted by the Common Council, in a case where the respondent claimed the right to change the character of the material used.

The circuit judge granted the writ.

Affirmed March 20, 1894, without costs.

1666 COMMON COUNCIL OF GRAND RAPIDS vs. BOARD OF PUBLIC WORKS, Nos. 12071-12072, 87 M., 113.

To compel the board to proceed with the pavement of certain streets.

Granted June 30, 1891.

1667 RUNNELLS vs. DAGGETT (Clerk, Pentwater), No. 14296½.

To compel the issuance of a license to operate a ferry.

Order to show cause denied May 21, 1895, on the ground that the application should be made to the Circuit Court.

1668 COMMON COUNCIL (Hudson) vs. WHITNEY (Recorder),
53 M., 158.

To compel respondent to advertise and sell certain lands returned for delinquent paving taxes.

Granted March 6, 1884.

Held, that the recorder could not refuse to perform the duty imposed upon him by the charter, on the ground that he believed the action of the council in laying the particular tax to be illegal, the proceeding being sufficiently regular and fair upon its face to protect ministerial action.

1669 BROOKS vs. DETROIT, LANSING & NORTHERN RAILROAD
CO., No. 12885.

To compel respondent to issue to petitioner a 1,000 mile ticket in the name of himself and wife, as required by 3 How. Stat., Sec. 3323, as re-enacted by Act No. 90, Laws of 1891.

Order to show cause granted June 14, 1892, but a stipulation was filed July 29, 1892, discontinuing the proceedings.

1670 CITY OF DETROIT vs. DETROIT & HOWELL PLANK ROAD
COMPANY, 43 M., 140.

To compel respondent to remove its toll gate beyond the city limits.

Denied April 7, 1880.

1671 SMITH vs. LAKE SHORE & MICHIGAN SOUTHERN RAILWAY CO., No. 15585; 4 D. L. N., 662; 72 N. W., 328. (Certiorari to Lenawee.)

To compel respondent to issue a 1,000 mile ticket in the name of relator and wife, under Sub. 9 of Sec. 9, of Art. 2, of the General Railroad Laws, as amended by Act No. 90, P. A. 1891.

The circuit judge granted the writ.

Affirmed October 1, 1897.

1672 MASON vs. DETROIT, GRAND HAVEN & MILWAUKEE R. R. CO., No. 14596, 104 M., 631. (Certiorari to Shiawassee.)

To compel respondent to construct a culvert across its right-of-way to accommodate a drain claimed to have been established by relator as county drain commissioner.

The circuit judge granted the writ.

Reversed April 16, 1895, with costs.

Held, that the action of the county drain commissioner in establishing a drain wholly within the corporate limits of a city, the charter of which gives to the city complete jurisdiction over its drainage, is void.

1673 CITY OF DETROIT vs. FORT WAYNE & BELLE ISLE RAILWAY CO., No. 13459, 95 M., 456.

To compel respondent to comply with the provisions of a city ordinance respecting the sale of tickets by a street railway company.

Granted April 28, 1893, with costs.

1674 CITY OF BENTON HARBOR vs. ST. JOSEPH & BENTON HARBOR STREET RAILWAY COMPANY, No. 14435, 102 M., 386.

To compel respondent to pave between its rails and tracks on certain streets.

Denied November 7, 1894, with costs.

It appeared from the answer that owing to financial straits in which respondent is placed, it is impossible for its officers to borrow or otherwise raise the money to pay for such paving.

Held, that mandamus will not lie in such case; and further, that where no issue is framed upon the answer the statement of facts contained in the answer must be taken as true.

1675 CITY OF DETROIT vs. FORT WAYNE & ELMWOOD RAILWAY CO., 41 M., 413.

To compel respondent to pave its share of a street upon which it operated its street railway, under the ordinance granting the franchise, which provided that it should keep the surface of the street inside the rails and for two feet four inches outside thereof, in good order and repair.

Granted July 2, 1879.

1676 CITY OF LANSING vs. LANSING CITY STREET RAILWAY CO., No. 15144; 3 D. L. N., 41; 66 N. W., 949. (Certiorari to Ingham.)

To compel respondent to repave that portion of a street lying between its tracks, and on each side of its track to the end of its ties, under the provisions of the ordinance which granted respondent's assignor the right to operate its lines.

The circuit judge granted the writ.

Affirmed April 21, 1896, with costs.

Respondent contended that the ordinance did not require it to repave, and insisted that mandamus is not the proper remedy.

1677 CITY OF DETROIT vs. FORT WAYNE & ELMWOOD RY. CO., No. 12536; 90 M., 646; 20 L. R. A., 79.

To compel respondent to observe the order of the Common

Council for the removal of the projecting ends of the ties upon which its tracks are laid preparatory to paving the street.

Granted March 18, 1892, with costs.

1678 VAN NORMAN vs. CENTRAL CAR & MANFG. CO., 41 M., 166.

Mandamus not a proper remedy to compel a corporation to pay dividends which it has declared. June 11, 1879.

1678% SECRETARY OF STATE vs. STATE INSURANCE COMPANY, 19 M., 392.

To compel respondent to submit its affairs to an examination under Section 26, Laws of 1869, page 230.

October 28, 1869.

Where a statute imposes a specific duty, either in or by a fair and reasonable implication, and there is a specific and adequate remedy, the writ of mandamus lies to compel the performance of that duty.

WILSON vs. MENDELSON ET AL. (Directors Mendelson & Co.), No. 13449.

Relator claiming to be the president, against the directors and members of the board of directors, to compel the board to elect and designate some person as treasurer, secretary and general manager to give relator access to the books and records of said company.

Relator to enter and record the proceedings of the directors.

Relator to board and officers to recognize relator as president. Relator to secretary and manager to submit a statement in writing of the actual condition of the business.

Relator to secretary and manager to deliver up to relator the

June 28, 1893, with costs.

**1680 BARCLAY (Admr.) vs. LANSING LUMBER COMPANY,
No. 12335.**

To compel respondent or its officers to permit relator, who holds certain shares of stock in the respondent corporation, to inspect the stock book and the last inventory or balance sheet of said company, or give to relator a full statement in writing under the hand and oath of the officers, showing how much stock has been issued by said company, how much cash has been paid in therefor, who holds the stock of said company and how much each person holds, what are the assets and liabilities of said company and of what said assets consist.

The answer denied the ownership of the stock by the estate and alleged ownership in a third party.

An issue was framed and sent to the Ingham circuit for trial November 10, 1891.

**1681 DUSENBERRY vs. LOOKER ET AL., No. 15504; 3 D. L. N., 289;
67 N. W., 986. (Certiorari to Wayne.)**

To compel the president and secretary of a corporation to issue the necessary notice to re-convene the stockholders' meeting, for the purpose of holding an election in compliance with the minority law, 3 How. Stat., Sec. 4885a.

The circuit judge refused the application.

Affirmed June 30, 1896, with costs.

Held, that the duty sought to be imposed rests upon the directors themselves and not upon the officers named.

1682 KALAMAZOO CASKET CO. vs. BLAKE (Secretary), No. 13153.

To compel respondent to restore the books and records of said corporation and to allow them to remain in the business office of said company during business hours, and to afford to said corporation the free right of inspection and use of said books and records.

Ordered, without costs, December 1, 1892, that respondent produce the seal, stock book and record book at any time and place when directed by the board of directors.

1683 COMMON COUNCIL (Detroit) vs. RUSH (Controller), 82 M., 532, 10 L. R. A., 171.

To compel respondent to advertise for bids to construct election booths under Act No. 263, Laws of 1889.

Granted October 14, 1890. Respondent insisted that the act is unconstitutional and that no provision had been made for the expense.

1684 GREENOP vs. BEACH ET AL. (Trustees of the Society of United Brethren in Christ), No. 13395.

To compel respondents to permit the use of a certain church building by other denominations than the said society of United Brethren, when the same is not in use by said society, that being one of the conditions upon which the land upon which the church was built was granted, and the agreement upon which the subscriptions were made for the erection of the church.

Order to show cause granted March 7, 1893. Writ issued upon stipulation of the parties filed April 7, 1893, without costs.

1685 McNAUGHTON vs. McLEAN ET AL., 73 M., 250.

To compel respondent McLean, as financial secretary of the Laboring Men's Building and Saving Association, to transfer to relator certain shares of stock in said association, bid off by him at an execution sale.

Denied January 11, 1889.

Held, that an execution sale made in the evening between 9

and 10 o'clock, and after most of the members of the association interested therein had left the place of sale, is void as to persons having knowledge of the facts.

1686 BISHOP vs. WALKER (Secretary), 9 M., 328.

To compel the secretary of the corporation to permit a stockholder to inspect the records.

Denied November 6, 1861.

Held, that to entitle a corporator to the remedy he must show that he has made a proper demand for such inspection, at a proper time and place, and for a proper purpose.

1687 BOARD OF PARK COMMISSIONERS (Detroit) vs. RUSH (Controller), No. 11613, 84 M., 154.

To compel respondent to advertise for proposals for certain park and boulevard bonds, issued by the Common Council, to raise money to pay for lands purchased or condemned by relators, under Sec. 15 of Act No. 388, Local Acts of 1889.

Granted December 24, 1890.

The controller claimed that before the bonds could lawfully be issued the consent of the board of estimates of said city must be obtained, but the Supreme Court held otherwise.

1688 BOARD OF PARK COMMISSIONERS vs. MAYOR (Detroit), 29 M., 343.

To compel respondent to execute and deliver to the controller of the city certain park fund bonds ordered by the Common Council to be issued for the purchase of lands for a public park, which have been selected and contracted for by the park commissioners, and the selection, and, as is claimed, the contract and terms of purchase approved by the Common Council.

Denied May 12, 1874.

Held, that the question of the purchase of lands for a park and the issue of bonds, under the legislation relating to the park, should be submitted to and receive the approval of the board estimates, as well as the Common Council.

**1689 HUBBARD ET AL. vs. TOWNSHIP BOARD (Springwells).
25 M., 152.**

To compel the board to issue certain bonds for the improvement of Fort street from the western limits of the City of Detroit to the Dearborn road, the entire work being in the township of Springwells, under Act 414 of the Laws of 1871.

Denied, with costs, May 17, 1872.

**1690 PLUGGER ET AL. vs. TOWNSHIP BOARD (Overyssel).
11 M., 222.**

To compel the issue of bonds under a contract for the improvement of the harbor at the mouth of Black river, in Ottawa County, under the Act of the Legislature approved February 8, 1858.

Denied April 28, 1863, on the ground that four of the board of freeholders for the township of Holland, which was one of the four townships undertaking said work, were at the time the contract was entered into among the contractors for doing the work.

1691 BOARD OF SUPERVISORS (Alpena) vs. SIMMONS (County Clerk), No. 14755, 104 M., 305. (Certiorari to Alpena.)

To compel respondent to sign certain county bonds, proposed to be issued under Act No. 149 of the Laws of 1893. The Circuit Court denied the writ.

Affirmed March 5, 1895, without costs.

The bonds are made payable in from twenty to forty years.

The question submitted to the electors was, "shall the county issue bonds for \$100,000?" Said Act No. 149 contains no provision fixing the time which bonds issued thereunder shall run, and respondent insisted that the general law, Sub. 8, Sec. 384, How. Stat., which limits the time to fifteen years, controls.

1692 DETROIT & HOWELL RAILROAD COMPANY vs. TOWNSHIP BOARD (Salem), 20 M., 452.

To compel respondent to execute and issue bonds to aid in the construction of the railroad proposed to be constructed through the township of Salem, under Act No. 49, Laws of 1864.
Denied May 26, 1870.

1693 IRONWOOD WATER WORKS ET AL. vs. MAYOR, CLERK AND CONTROLLER (Ironwood), No. 13981.

1694 GEARY ET AL. vs. MAYOR, CLERK AND CONTROLLER (Ironwood), No. 13982, 99 M., 454. (Certiorari to Gogebic.)

To compel the issue of certain bonds in payment for water works, where the amount of the bonds, together with the mortgage debt resting upon the water works, subject to which the city is to purchase the works, exceeds the charter limit of indebtedness.

The circuit judge granted the writ.

Reversed March 27, 1894, with costs of both courts.

1695 BOARD OF PARK COMMISSIONERS vs. COMMON COUNCIL (Detroit), 28 M., 227.

To compel respondent to order an issue of bonds to purchase land for a park, contracted for by the commissioners.

Denied October 28, 1873.

Held, that in matters of exclusive local concern, the State has no right to interfere and control by compulsory legislation the action of municipal corporations. Also, that the performance of a mere ministerial duty may as well be enforced by mandamus when it rests upon an aggregate body like the Common Council, as when incumbent upon a single officer.

1696 BOARD OF SUPERVISORS (Dickinson) vs. WARREN (Chairman), No. 13902½, 98 M., 144.

To compel respondent to sign bonds amounting to \$30,000 to defray current expenses.

Denied December 13, 1893, without costs.

1697 DANIELS vs. LONG (Pres., Vicksburg), No. 15946; 3 D. L. N., 773; 69 N. W., 112. (Certiorari to Kalamazoo.)

To compel respondent to sign certain bonds for the purpose of raising funds to provide a municipal lighting plant and water works.

The circuit judge granted the writ.

Reversed and writ denied February 2, 1897, with costs.

Held, (1) that the fact that an action was still pending to test the validity of a prior election, would not preclude the council from issuing bonds on a new election, in the absence of any showing that the prior suit was based upon the ground that the issuance of bonds should be restrained because of the amount being in excess of the power of the council; (2) that under the provisions in the charter, that "the question * * * * shall be submitted to the electors, * * * * and shall be determined as two-thirds of the electors voting at such election by ballot shall direct," each of the two propositions submitted must receive votes in its favor, equal to two-thirds of the number of voters who voted at the election, in order to carry it; and (3) that an inquiry into the legality of such an election and canvass may be made in mandamus proceedings.

1698 COMMON COUNCIL (Muskegon) vs. GOW (Mayor), No. 13180, 94 M., 453.

To compel respondent to execute and deliver certain bonds.
Granted December 24, 1892, without costs.

The question raised was as to the authority of the council to issue the bonds in question without the vote of the electors.

1699 KEENAN ET AL. vs. MICHIGAN GAS CO., No. 12776.

To compel respondent to furnish gas for illuminating purposes.

Denied May 11, 1892, with costs.

Respondent is engaged in furnishing natural gas for fuel and for illuminating purposes. Relator desired its use for illuminating purposes only. Under the ordinance of the city the limit of the price of gas for fuel purposes was fixed at 33 cents per thousand feet, but there was no limitation upon the price of gas furnished for illuminating purposes. Relator demanded gas at the rate of 33 cents, and respondent offered to furnish it at the rate of \$1.25, insisting that that rate was not an unreasonable charge, and that it could not afford to furnish it at 33 cents.

1700 OSBORN vs. CIRCUIT JUDGE (Charlevoix), 4 D. L. N., 731.

To dissolve an injunction restraining the game and fish warden from enforcing the provisions of Act No. 151, Public Acts of 1897, and Act No. 110 P. A. of 1893.

Granted November 12, 1897.

1701 EDDY ET AL. vs. CIRCUIT JUDGE (Bay), 4 D. L. N., 731.

To compel vacation of an order entered, in an action for malicious prosecution, requiring relators to produce certain books and papers of a corporation, in which they are stockholders, for inspection.

Denied November 12, 1897.

Relators contended that, rules 40 to 43 having been omitted in the late revision, there are no rules now in force relating to the production of books.

The Court held, that at common law, the production of books and papers can be compelled where a trust relation exists.

1702 KETCHAM vs. CIRCUIT JUDGE (Kent), 4 D. L. N., 764.

To compel respondent to dismiss a writ of garnishment, because no notice had been given to the principal defendant, under Rule 35, of the intention to issue the writ.

Denied November 17, 1897.

Held, that it was not the intent of the rule to compel the giving of notices in advance in any case, where, under the old rules of practice, it was not necessary to previously apprise the opposite party in advance of the proceedings about to be taken.

1703 PORTER (Probate Judge, Ingham) vs. EDWARDS (Supt. Asylum for Insane), 4 D. L. N., 706.

To compel respondent to admit to the Asylum at Kalamazoo, as a public charge, one who has been adjudicated an insane person, but who had not gained a settlement in Ingham County, and whose legal residence is unknown.

Denied October 25, 1897.

Held, that Act No. 135 Public Acts of 1885, as amended by Act No. 62, P. A. 1887, was repealed by Act No. 44, P. A. 1897, and the latter Act provides that the persons committed must be citizens of the State.

**1704 GILSON vs. SUPERVISOR (Deerfield Twp.), 4 D. L. N., 743.
(Certiorari to Lapeer.)**

To compel respondent to spread the cost of the construction

of a division line fence, as determined by fence viewers under 3 How. Stat., Sec. 799, upon the tax roll. The Circuit Court granted the writ.

Affirmed with costs of both courts, November 17, 1897.

1705 SERVISS vs. BOARD OF PUBLIC WORKS (Detroit), 4 D. L. N., 751. (Certiorari to Wayne.)

To compel respondent to approve a plat which covered premises which would be within the lines of a public street, if extended, and made no provisions for such street.

The Circuit Court refused the writ.

Affirmed November 17, 1897. See No. 1655.

1706 MICHIGAN FEMALE SEMINARY vs. SECRETARY OF STATE, 4 D. L. N., 796.

To compel respondent to file articles extending the corporate existence of relator without payment of the franchise fee under Act No. 182, Public Acts of 1891, as amended by Act No. 79, P. A. 1893.

Granted December 7, 1897.

Held, that the provisions of the last named Act do not apply to corporations organized for educational purposes only.

1707 SMITH (County Drain Comr.) vs. BOARD OF SUPERVISORS (Ingham), 4 D. L. N., 821.

To compel respondent to re-convene and assess a tax for cleaning out a drain.

Denied December 7, 1897.

The contract had been let, but no work had been done thereon. In his notice, the commissioner advertised that the job would be let by sections.

The answer set forth, that the job had been let as an entirety; that responsible parties were present at the time and place appointed for the letting of the contract, but that the commissioner refused to receive bids for sections; that the petition for the drain, asks for the cleaning out of the drain, while the contract provides for deepening and widening, and, in some places, changing the route of the drain. The return also alleged fraud in the letting of the contract.

Held, that respondent's return must be taken as true.

1708 WARREN SCHARF ASPHALT PAVING CO. vs. SECRETARY OF STATE, 4 D. L. N., 819.

To compel respondent to record certificates of increase of capital stock.

Granted December 7, 1897.

Relator had, from time to time prior to April, 1891, increased its capital stock from \$60,000 to \$750,000, and in May, 1895, it was increased to \$950,000, but no certificates of such increases had been filed. In September, 1897, relator filed the certificates of increase with a recording fee of one dollar, and a franchise fee of one-half of one mill provided for by the Act of 1893, on the last increase of capital. Respondent insisted upon a franchise fee of one-half of one mill on the prior increases as well, but the court held that the Act of 1893 was not retroactive.

1709 RANDALL vs. SWEIKART ET AL., 4 D. L. N., 906. (Certiorari to Wayne.)

To compel respondents to recognize relator as a member of the Board of Park and Boulevard Commissioners of Detroit. The circuit judge denied the writ. Affirmed Dec. 21, 1897.

Relator was a member of the board, but the term for which

he was appointed expired. He claimed that he was entitled to hold over until his successor should be appointed. The mayor made an appointment of a successor, which was confirmed by a majority vote of a quorum of the common council. Relator insisted that the confirmation required a majority vote of the members elect of the council, under Section 114 of the Charter, which provides that all appointments to office by the council shall be made by a majority vote of the aldermen elect. Held, that said Section 114 has no application to an appointment by the mayor "with the consent of the common council" under the Act relating to the respondent board.

1710 BOSTWICK vs. CIRCUIT JUDGE (Wayne), 4 D. L. N., 866.

To compel the dismissal of an appeal from Justice Court, taken by plaintiff in an action of replevin. Granted, without costs, December 21, 1897.

The affidavit alleged the property to be worth \$150, and not to exceed \$500.

Held, that Act No. 460, L. A. 1895, does not confer upon justices of the peace of Detroit jurisdiction in replevin cases involving more than \$100; that their jurisdiction in such cases is governed by the general statute. The defendant did not raise the question before the justice, and costs were therefore denied.

1711 MONROE WATER CO. vs. HEATH (Mayor, Monroe), 4 D. L. N., 875. (Certiorari to Monroe.)

To compel respondent to sign a contract, for supplying the city of Monroe with water, ordered by the common council.

The circuit judge denied the application. Reversed and writ granted, without costs, December 15, 1897.

1712 RODGERS (Pros. Atty.) vs. CIRCUIT JUDGE (Kent), 4 D. L. N., 899.

To vacate an order discharging, on appeal to the Circuit Court, one who had been convicted before a justice (under Act No. 248, Public Acts 1897) for traveling, trading and soliciting trade without first obtaining a license therefor.

Denied December 21, 1897. Act held unconstitutional.

1713 REID, MURDOCK & CO. vs. CIRCUIT JUDGE (Benzle), 4 D. L. N., 899.

To vacate a common order defaulting plaintiff for not filing declaration in a case commenced by *capias*.

Granted, on the ground that the default was prematurely entered; that plaintiffs were entitled to file their declaration at any time before the end of the next term after the return of the writ; that the proceedings in such case are governed by statute (2 How. 7312) and not by rule.

TOPICAL INDEX.

Note.—For convenience, it has been deemed best to divide this index into three parts, viz.:

Part I, which refers to (1) GENERAL PRINCIPLES, (2) JURISDICTION, (3) PROPER RELATOR, (4) PRELIMINARY ACTION, (5) THE APPLICATION, (6) ORDER TO SHOW CAUSE, (7) THE ANSWER, (8) FRAMING OF ISSUES, (9) TRIAL OF ISSUE, (10) THE HEARING, (11) THE RELIEF, (12) COSTS, (13) OBEDIENCE TO WRIT, (14) REVIEW, (15) AMENDMENT, and (16) RES JUDICATA.

Part II relates to proceedings against CIRCUIT COURT, SUPERIOR COURT, and RECORDERS' COURT JUDGES, PROBATE JUDGES, JUSTICES OF THE PEACE, POLICE JUSTICES, and CIRCUIT COURT COMMISSIONERS; and

Part III relates to proceedings against STATE OFFICERS, BOARDS, CITIES, COUNTIES, SCHOOL DISTRICTS, TOWNSHIPS, VILLAGES, or BOARDS or OFFICERS thereof, and others.

PART I. (1) GENERAL PRINCIPLES.

The writ is granted only in cases where the party has a clear, strictly legal right and no other remedy, 93, 173, 511, 658; no other adequate legal remedy, 148, 203; no other specific and adequate remedy; it is the inadequacy and not the mere absence of all other legal remedies, and the danger of a failure of justice

without it, that must usually determine the propriety of the writ, and the remedy is not excluded by other legal remedies which are not adequate to secure the specific relief needed, nor by the existence of a specific remedy in equity, 1013; it may issue where other remedies exist, if not sufficiently speedy to prevent material injury, 800; it is a prerogative writ designed to afford a summary and specific remedy where the party applying for it would otherwise be subjected to serious injustice. As a general rule the writ will not lie where the law has provided another remedy; otherwise if the slowness of the ordinary legal forms is likely to produce such immediate injury or mischief as ought to be prevented, 12, 419; where the Statute imposes a specific duty and there is no other specific and adequate remedy, the writ may be awarded to compel the performance of the duty, 1130, 1148, 1678½.

It is within the province of courts to restrain public bodies and officers of counties and other municipal divisions from exceeding their jurisdiction, and also to require them to perform such specific duties as the law imposes upon them, 1130, 1148, 1649¼ to 1650; and the writ has often been issued to compel such bodies or officers to reverse their decision, 1499, 1566.

The writ is a discretionary one, and will not be issued in all cases even where a prima facie right to relief is shown; but regard will be had to the exigency which calls for the exercise of such discretion, the nature and extent of the wrong or injury which would follow a refusal of the writ, and other facts which have a bearing upon the particular case, 1649½.

Mandamus will not issue to a state officer to compel him to perform any but some unquestionable and legally defined duty. Where the liability is not recognized by the State, no suit will lie to determine it, and what cannot be done against the State directly, cannot be done under color of a suit against a State officer, 1006, 1019.

Courts have no jurisdiction by mandamus to coerce the Gov-

ernor, 978; or the Board of State Auditors, respecting the allowance of a claim, 982.

The Supreme Court has plenary jurisdiction in mandamus, 800, 1366; it is not a writ of right, 132, 383; but is demandable of right in a proper case, 1088; it is a mode of enforcing rights and acknowledged duties, 1; it is granted in the exercise of a sound legal discretion, 1088.

It issues only to compel recognition of a clear legal right or the performance of a legal duty; it does not issue so long as the right or duty is disputed or doubtful, 1, 93, 148, 658, 1249, 1367, 1514.

It is the proper process to set a court in motion, 173, 350, 723; but not for reviewing its judicial discretion where another suitable remedy exists, 203, 350, 383, 482, 669, 862, 1031; nor for requiring the court to come to any particular conclusion, 173; nor to review irregularities in the judicial action of an inferior tribunal where relator has another adequate remedy, 705, 730; nor to review the exercise of political and executory functions, not ministerial, 979; nor will it issue to gratify the spite of private individuals, nor where relator has instigated or approved the act complained of, 1647; nor to set aside defective proceedings where the defects are such as may be obviated by amendment, 746; nor to enforce or to annul a contract, 986, 1630; nor to give redress for a breach of contract, 1101½; nor to compel an order which is not necessary to perfect relator's right, 593; nor to try questions of corporate existence, 1071; nor to try title to public office, 1172 to 1204, 1398; nor to determine the boundaries of the franchises of two municipal boards, 1185; nor to accomplish a confessedly illegal purpose, 1320, 1367; nor to compel the performance of an idle ceremony, 1100, 1649½; nor where the person to whom addressed has no power to obey, 414, 980, 981; nor where, because of financial circumstances, performance is impossible, 1674; it is not allowed to those who have been culpably dilatory or otherwise at fault, 383, 1086, 1414, 1415, 1494; nor where relator had another remedy which

has been lost by lapse of time, 139, 146, 715, 851; nor to compel a circuit judge to make an order, when that order is not necessary to perfect the right of the party applying for it, 593.

Legal process may be abused and legal proceedings may be instituted for delay and annoyance, but such issues cannot be tried by mandamus, 757.

The remedy is not precluded by the fact that respondent may be liable as for a misdemeanor, 979.

A mandamus proceeding against an official is not affected by a change of incumbency, 1384.

Performance of a ministerial duty may as well be enforced when it rests upon an aggregate body like a common council as where incumbent upon a single officer, 1208, 1695.

Generally no matter can properly be tried upon mere affidavit, unless it is a matter which depends upon the discretion of the court, and if it be such, said court cannot control that discretion, 759.

Where directed to a legal tribunal it is an exercise of supervisory judicial control, and in the nature of appellate action. The writ should be regarded as directed to the judge officially and as binding the incumbent, whosoever he may be, the party sustaining the action complained of is to all intents and purposes represented by the judge, 739.

It is not adapted to cases calling for continuous action, 1618.

Court may refuse writ unless party seeking it consents to do equity, 1314.

It is properly denied where its exercise is asked in a matter of policy rather than of right, 1351.

Court will not be required to vacate an order not erroneous when made, 780.

It is the only adequate remedy to vacate an interlocutory order not touching the merits, 116.

The proper remedy to review an abuse of discretion, 858 to 863, but the abuse must be clear, 378; an abuse of discretion does not consist of a failure to exercise discretionary power pre-

cisely as the reviewing court might under like circumstances have done, 102.

Where the decision of a judge calls for the exercise of judgment in determining a question of fact, his determination will not be reviewed by mandamus if there be any evidence before the court having a tendency to establish the fact, 131, 203, 291, 471; when the question which the judge determines is whether there is jurisdiction to proceed to try the question of fact, his ruling is open to review, and mandamus is the only adequate remedy, 471.

Judicial discretion is always involved in mandamus cases, concerning the relief as well as other questions, 979.

It will not be granted to enforce the doing of an act which by law lies in the discretion of the officer refusing to do it, 1020.

(2) JURISDICTION.

Section 3 of Article VI. of the Constitution provides that,

“The Supreme Court shall have a general superintending control over all inferior courts, and shall have power to issue writs of error, habeas corpus, mandamus, quo warranto, procedendo, and other original and remedial writs, and to hear and determine the same. In all other cases it shall have appellate jurisdiction only.”

Section 8 of Article VI. of the Constitution, prior to the amendment in 1893, was as follows:

“The Circuit Courts shall have original jurisdiction in all matters, civil and criminal, not excepted in this Constitution, and not prohibited by law; and appellate jurisdiction from all inferior courts and tribunals, and a supervisory control of the same. They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments and decrees, and give them a general control over inferior courts and tribunals within their respective jurisdictions.”

Jurisdiction of Circuit Court under, No. 1479.

In 1893 this section was amended so as to read as follows:

“Sec. 8. The Circuit Courts shall have original jurisdiction in all matters civil and criminal, not excepted in this Constitution, and not prohibited by law; and appellate jurisdiction from all inferior courts and tribunals and a supervisory control of the same. They shall also have power to issue writs of habeas corpus, mandamus, injunction, quo warranto, certiorari, and other writs necessary to carry into effect their orders, judgments and decrees, and give them general control over inferior courts and tribunals within their respective jurisdictions and in all such other cases and matters as the Supreme Court shall by rule prescribe.”

The Supreme Court, in May, 1893, prescribed the following Circuit Court rule:

“Rule 46. (Old Rule 107) (a) Circuit Courts shall have jurisdiction, within their respective counties, in all mandamus proceedings, involving the action of any officer or board of any county, township, city or school district, or of the Common Council of any city or village, and the action of any private corporation or officer or board thereof. Said Circuit Court shall also have jurisdiction to issue writs of certiorari in all cases where they may now be issued by the Supreme Court to Probate Courts, Circuit Court Commissioners and Justices of the Peace, or any corporate body or officer thereof. Writs of certiorari and orders to show cause in cases of mandamus shall be made returnable and service thereof made within such time as the Circuit Courts shall upon each occasion direct.”

Orders to show cause have been denied in a number of cases, on the ground that the application should have been made to the Circuit Court, under the first subdivision of this rule.

See Nos. 227, 636, 1132, 1164, 1245, 1325, 1352, 1369, 1380 to 1384, 1473, 1482, 1483, 1573, 1667.

The Supreme Court has, however, in several instances entertained the application, where it appeared that public interests required the immediate disposition of the case.

Or where it appeared that the Circuit Court was not in session and would not be for some time, and the immediate disposition of the matter was necessary.

See Nos. 1199, 1274, 1317, 1318, 1347, 1348, 1616.

Or where it appeared that the circuit judge was disqualified, Nos. 923, 1346, 1485.

Where a circuit judge illegally refuses to hear an application for mandamus, application should be made to the Supreme Court for an order to compel him to do so. Nos. 636, 1327.

(3) PROPER RELATOR.

Mandamus will not issue at the instance of one who has no special or specific interest in the matter 979, 1088, 1093, 1104, 1576, 1609; but a private citizen may apply, when the attorney general has placed himself in an adverse position, 979, 991. It may be resorted to for the enforcement of private rights when withheld by public officers, 1566; the rule rejecting the intervention of private parties, one of discretion rather than one of law, 979; police justice not a proper party to enforce payment of claim against county due city, 1576; appellee has sufficient interest in the payment of the justice's fee for making a return, to entitle him to writ, 203; attorney general is not a proper relator in proceedings before a justice for examination of one accused of a crime, that does not affect public interests, 232.

Chattel mortgagee, a proper relator to compel filing of mortgage, 1106.

Director of school district, a proper relator, 1455.

Judgment creditor, to compel issue of execution, 1105.

Mother, in proceeding to compel imprisonment of one convicted of bastardy, 1595.

Private person, a competent bidder under State law for letting a contract, may appear as relator to compel State officers to carry out the law, if attorney general declines to appear for him, 979.

Prosecuting attorney, is a proper relator in a proceeding to set the court in motion in a case under his control, 236.

Water commissioners, to compel payment of bonds issued by them, 1351.

(4) PRELIMINARY ACTION.

Application should first be made to vacate the order complained of, or to do that which it is sought to compel, 91, 181, 205, 314, 397, 483, 516, 649, 747, 1081, 1686.

(5) THE APPLICATION.

It should set forth the facts upon which the circuit judge acted, 298, 886; matters not brought before the court below will not be considered in Supreme Court, 298, 383, 790, 886; party relying on official records must produce same or certified copies thereof, 6, 1561; record issues should be set forth as they stand, 1327; in application to compel approval of liquor bond, the reason for the refusal, if any was given, and the circumstances of such refusal, should appear, 1248, 1254 to 1257.

Amendment of application, 1429; costs on withdrawal of, 1640; cross petition, order granted on, 1274; demurrer to application, 55.

A brief statement of the grounds and objects of the application should be filed therewith. Supreme Court Rule 27.

Order to show cause denied because brief not filed, 216, 219.

The application must be heard on the facts disclosed at the hearing below and not on new facts brought into the case for the first time in the Supreme Court, 790.

(6) ORDER TO SHOW CAUSE.

Circuit Court Rule No. 46 provides that "all orders to show cause, in mandamus proceedings, may be made by the court or in vacation by the judge of the court."

Amendment of, 1435; propriety of remedy not determined by issue of, 750; issued on cross petition, 1165, 1274; stay of proceedings upon issue of, 281; service of, Rule No. 46.

An order to show cause does not necessarily imply personal

censure of the respondent. The review of judicial action is confined to legal errors, and the action itself is presumably conscientious, 866.

(7) THE ANSWER OR RETURN.

“Whenever any writ of mandamus shall be issued out of the Supreme Court, or by any Circuit Court of this State, the person, body or tribunal to whom the same shall be directed and delivered shall make returns to the first writ of mandamus, and for a neglect to do so shall be proceeded against as for a contempt. And whenever on application to the Supreme Court for a mandamus against any circuit judge for the purpose of reviewing any order, decree or decision made by such judge, in any matter or proceeding pending before him, in court, at chambers or otherwise, an order is made requiring such judge to show cause why the prayer contained in such application should not be granted, his return shall be settled by causing a copy of his proposed return to such order to show cause, or to said writ, together with a notice when and where the same will be presented for settlement, to be served on the applicant or his attorney at least four days prior to the time of such settlement, which time shall be at least three days before the time designated, to show cause or the time of the return of such writ. Amendments to such showing, or return, may be proposed by the applicant or his attorney, and all disputes respecting the same shall be determined by such judge according to the facts on such settlement.”

How., Sec. 8663, as amended by Act No. 236, Public Acts 1897.

Supreme Court Rule 13: “In proceedings for mandamus, where an order to show cause has been made, the respondent must answer fully every material allegation of the petition, and every material averment not so answered may be taken as admitted by the respondent to be true as alleged. And in case no answer is made and filed as required by such order, the court, upon due proof of service of the order, will award a peremptory mandamus.

as prayed for, or enforce obedience to the order by process for contempt."

Circuit Court Rule 46 provides that

"All material allegations of the petition in mandamus proceedings not specifically answered by the respondent, may be taken as admitted by the respondent to be true as alleged."

Failure to answer averments of petition will be treated as admitting same, 630; court must rely upon the facts set up in answer, and same will be taken as true unless an issue is framed, 859, 1157, 1181, 1417, 1420, 1423, 1447, 1453, 1555, 1674; party cannot be compelled to admit or deny what he has no means of knowing with certainty, 1353; failure to answer amounts to an admission, under Supreme Court Rule 13 (old Rule 63), that all of the material averments of the petition are true, 630; failure to answer does not subject respondent to fine under How., Sec. 8669, 5; the only redress for an evasive answer is a peremptory mandamus and costs, 1253; contempt order issued for failure to answer, 1416; facts relied upon in justification should be set forth in, and not in affidavit, 1253; answer of circuit judge will be disregarded if not submitted to and approved by him, 55; aggregate body, majority return of, 1157.

Ex parte affidavits returned by the circuit judge in response to an order to show cause why he should not grant a motion, will not be received if they were not used on the motion, 866.

"Whenever a return shall be made to any such writ, the person prosecuting the same may demur or plead to all or any of the material facts contained in the said return, and the like proceedings shall be had thereon for the determination thereof, as might have been had if the person prosecuting such writ had brought his action on the case for a false return." How. Stat., Sec. 8664.

"The Supreme Court, or any justice thereof, or the judge of any Circuit Court, shall have the same power to enlarge the time for making a return and pleading thereto as in personal actions." How. Stat., Sec. 8668.

Plea of statute of limitations, 1332, 1447.

(8) FRAMING OF ISSUES.

701, 859, 1157, 1412, 1417, 1420, 1423, 1429, 1445, 1447, 1453, 1465, 1555, 1664, 1674, 1680; issue of fact cannot be raised on answer of circuit judge as to matters within his knowledge, 701; answer taken as true unless issues framed, 630, 859, 1038, 1157, 1181, 1184, 1328, 1411, 1412, 1417, 1447, 1453, 1555, 1563, 1564, 1565, 1674; directed by the court, 1113; not allowed where duty imperative, 1114; if answer denies validity of orders, on petition to enforce payment of same, issues should be framed, 1412.

(9) TRIAL OF ISSUES.

1429; exceptions assigned upon, 1429, 1445, 1664; refusal of circuit judge to submit special questions upon, 1452.

Where no objection is made to manner of, and case is presented on the merits upon the trial thereof, any objections as to regularity will be treated as waived, 1568.

"Issues of fact joined in any such proceeding shall be tried in the county within which the material facts contained in the mandamus shall be alleged to have taken place."

"In case a verdict shall be found for the person suing such writ, or if judgment be given for him upon demurrer, or by default, he shall recover damages and costs, in like manner as he might have done in such action on the case as aforesaid; and a peremptory mandamus shall be granted to him without delay."

"A recovery of damages by virtue of this chapter, against any party who shall have made a return to a writ of mandamus shall be a bar to any other action against the same party for the making of such return." How. Stat., Secs. 8665, 8666, 8667.

(10) HEARING.

Calendar cause, ordered to be heard as, 7, 131, 1671.

Continuance of, on payment of costs, 131.

Death of party, suggestion of, 131.

Docket, cause stricken from, 131.

"Mandamus and certiorari proceedings shall stand for hearing upon the return day of the writ, without notice of trial or hearing, unless the court for cause shown shall order a postponement of such hearing." Circuit Court Rule No. 46.

Supreme Court Rule 27 provides that "fifteen minutes on each side shall be allowed to the argument of a motion and no more, without special leave of the court granted before the argument begins, and only one counsel shall be heard on a side. Provided, That no oral argument shall be allowed on an ex parte application, or on any application for extension of time to sue out a writ of error, or to make return to a chancery appeal."

Supreme Court Rule 55 is as follows:

"Rule 55. Causes where the record fails to show that the amount involved, exclusive of costs, is more than five hundred dollars, and all motions shall be submitted on briefs, unless otherwise ordered by the court."

On the hearing of an application for mandamus, the party showing cause has the affirmative, 1416.

Where relator formally demurs to an answer, he has the affirmative, 1608.

Re-hearing granted in, 914.

(11) THE RELIEF.

Relator is not usually granted greater relief than that prayed for, 1384; it will not be given against one not a party and not notified, 1195; judicial discretion always involved concerning the relief as well as other questions, 979; not advisable to issue writ unless substantial if not final relief can be given, 1158; court will grant relief where case is made out in part, even if it fails in other respects, 1366.

(12) COSTS.

Supreme Court Rule 49 is as follows:

"Rule 49. A counsel fee shall be awarded to the prevailing party unless otherwise ordered by the court (excepting crim-

inal cases), in addition to such other costs as such party may be entitled to, as follows:

(a) On motions which do not finally dispose of the case, ten dollars.

(b) On mandamus and certiorari, heard as motions, fifteen dollars.

(c) On motions which finally dispose of the case, twenty dollars.

(d) On calendar causes, thirty dollars."

Where moving party makes default, party appearing to resist is entitled to costs, 568.

Costs may be awarded against person at whose instance order complained of was made, 59; denied where question of practice was unsettled, 138, 593; against party benefited by the action complained of, 425; denied where occasion for issue of writ was the error of relator's counsel, 530; respondent entitled to where relator does not appear, 568; awarded against estate, 428, 607; against demurring defendants, 631; denied against party interested but not brought in, 660; printing briefs, expense of allowed in mandamus case, 1032; not imposed because the question a new one, 667; denied where proceeding brought at instance of circuit judge, 715; not allowed if no intentional wrong on respondent's part is charged or appears, 13; not awarded against public officer where it appears that he acted in good faith, 1064, 1065, 1523; denied in proceeding to compel payment of two orders, where writ granted as to one and denied as to other, 1418; withdrawal of application on payment of, 1640; continuance on payment of, 131.

In mandamus against judicial officer, the party sustaining the action complained of is represented by the judge and is therefore responsible for the costs. There is no authority for imposing terms on relator, 739.

(13) OBEDIENCE TO WRIT.

Enforcible as for contempt, 1416, 1618, 1619.

"Whenever a peremptory mandamus shall be directed to any public officer, body or board, commanding them to perform any public duty, specially enjoined upon them by any provisions of law, if it shall appear to the court that such officer, or any member of such body or board, has, without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding two hundred and fifty dollars upon every such officer, or member of such body or board, which fine, when collected, shall be paid to the state treasurer, and be by him distributed and paid to the several county treasurers, in the manner and for the purpose specified in the twenty-second section of the last preceding chapter."

"The payment of such fine shall be a bar to any action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined." How. Stat., Secs. 8669, 8670. See No. 5.

(14) REVIEW.

Supreme Court Rule 12 is as follows:

"Rule 12. When in any case, any Circuit Court shall allow or deny a writ of mandamus, the party feeling himself aggrieved by such decision may apply to one of the justices of this court for the allowance of a writ of certiorari, and if the same shall be allowed, the cause when returned into this court may be noticed for hearing as a motion by either party on any motion day thereafter unless otherwise ordered."

(15) AMENDMENT.

By Howell's, Sec. 7638, the Statute of Amendments is made applicable to writs of mandamus.

(16) RES JUDICATA.

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PART II.

(Proceedings against Circuit Court, Superior Court, Recorder's Court and Probate Court Judges, Justices of the Peace, Police Justices, and Circuit Court Commissioners.)

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